This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

FROM
JOHN BYRNE & CO.
LAW BOOKS
1333 F Street N. W.
WASHINGTON, D. C.

L

HARVARD LAW LIBRARY

Received FEB 19 1915

TREASURY DECISIONS

UNDER CUSTOMS AND
OTHER LAWS

VOL. 27

JULY-DECEMBER, 1914

W. G. McADOO

Secretary of the Treasury

KF
6651
.A2
T732
v.27

WASHINGTON
GOVERNMENT PRINTING OFFICE
1915

FEB 19 1915

LETTER OF INSTRUCTION.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., December 31, 1914.

The following instructions are published for the information and guidance of customs officers and others concerned:

1. Decisions of the Board of United States General Appraisers adverse to the Government will, if not appealed from, take effect 60 days after their respective dates, except that decisions based on protests filed in Alaska and in the insular and other outside possessions of the United States will take effect 90 days after their respective dates, in accordance with subsection 29 of section 28 of the act of August 5, 1909. Entries covering the merchandise the subject of such decisions will be reliquidated in harmony therewith at the expiration of the period mentioned, except that entries covering merchandise the subject of decisions of the board which follow a given decision of the Court of Customs Appeals involving the same issue will be reliquidated immediately upon receipt of orders from the board.

2. Entries the subject of protests which have not been forwarded to the board, and which are covered in principle by a given decision of the Court of Customs Appeals, will be reliquidated in harmony with the said decision after 30 days have elapsed from the date thereof.

3. Unliquidated entries which involve issues covered by a given decision of the Court of Customs Appeals, and which would in ordinary course be liquidated within 30 days after the rendering of such decision, will be suspended until 30 days have elapsed from the date of such decision, and will then be liquidated in accordance with the principle laid down by the court.

4. In the absence of specific instructions from the department to the contrary, decisions of the Board of United States General Appraisers adverse to the Government, if appealed from by the department, will not result in any change of practice prior to the decision of the appeal by the Court of Customs Appeals.

5. Decisions of the Court of Customs Appeals adverse to the Government will become effective upon the issuing of orders by the Board of United States General Appraisers pursuant to the mandates of the said court. Entries covering the merchandise the subject of such decisions will be reliquidated only upon receipt of such orders.

W. G. McADOO,
Secretary of the Treasury.

CUSTOMS.

(T. D. 34610.)

Values of foreign coins.

[Circular No. 1.]

TREASURY DEPARTMENT, *July 1, 1914.*

In pursuance of the provisions of section 25 of the act of August 27, 1894, I hereby proclaim the following estimate by the Director of the Mint of the values of foreign coins to be the values of such coins in terms of the money of account of the United States, to be followed in estimating the value of all foreign merchandise exported to the United States during the quarter beginning July 1, 1914, expressed in any such metallic currencies.

Entries of merchandise liquidated upon the values proclaimed herein will be subject to reliquidation upon the order of the Secretary of the Treasury whenever satisfactory evidence shall be produced to him showing that the values in United States currency of the foreign money specified in the invoices were at the date of certification at least 10 per cent more or less than the values herein proclaimed.

W. G. MCADOO, *Secretary.*

Estimate by Director of the Mint of the values of foreign coins.

Country.	Legal standard.	Monetary unit.	Value in terms of United States money.	Remarks.[1]
Argentine Republic	Gold	Peso	$0.9647	Currency: Depreciated paper, convertible at 44 per cent of face value.
Austria-Hungary	do	Crown	.203	
Belgium	Gold and silver	Franc	.193	Member of Latin Union; gold is the actual standard.
Bolivia	Gold	Boliviano	.389	12½ bolivianos = 1 pound sterling.
Brazil	do	Milreis	.546	Currency: Government paper, convertible at $0.3242 to the milreis.
British colonies in Australasia and Africa.	do	Pound sterling	4.8665	
Canada	do	Dollar	1.000	

[1] The exchange rates shown under this heading are recent quotations and given as an indication of the values of currencies which are fluctuating in their relation to the legal standard. They are not to take the place of the consular certificate where it is available.

Estimate by Director of the Mint of the values of foreign coins—Continued.

Country.	Legal standard.	Monetary unit.	Value in terms of United States money.	Remarks.
Central American States:				
Costa Rica	Gold	Colon	$0.465	
British Honduras	do	Dollar	1.000	
Nicaragua	do	Cordova	1.000	
Guatemala	Silver	Peso	.422	Guatemala: Currency, inconvertible paper, exchange rate 16 to 18 pesos=$1.
Honduras	Silver	Peso	.422	Honduras: Currency, bank notes.
Salvador	Silver	Peso	.422	Salvador: Currency, convertible into silver on demand.
Chile	Gold	do	.365	Currency: Inconvertible paper; exchange rate, approximately, $0.2061.
China	Silver	Tael: Amoy	.691	
		Canton	.690	
		Chefoo	.661	
		Chinkiang	.676	
		Fuchau	.640	
		Haikwan (Customs).	.704	
		Hankow	.647	
		Kiaochow	.670	
		Nanking	.685	
		Niuchwang	.649	
		Ningpo	.665	
		Peking	.674	
		Shanghai	.632	
		Swatow	.639	
		Takau	.696	
		Tientsin	.670	
		Dollar: Yuan	.504	
		Hongkong	.455	
		British	.455	
		Mexican	.458	
Colombia	Gold	Dollar	1.000	Currency: Inconvertible paper; exchange rate, approximately, $102 paper to $1 gold.
Denmark	do	Crown	.268	
Ecuador	do	Sucre	.487	
Egypt	do	Pound (100 piasters).	4.943	The actual standard is the British pound sterling, which is legal tender for 97½ piasters.
Finland	do	Mark	.193	
France	Gold and silver	Franc	.193	Member of Latin Union; gold is the actual standard.
German Empire	Gold	Mark	.238	
Great Britain	do	Pound sterling	4.8665	
Greece	Gold and silver	Drachma	.193	Do.
Haiti	Gold	Gourde	.965	Currency: Inconvertible paper; exchange rate, approximately, $0.2941.
India (British)	do	Rupee	.3244½	(15 rupees = 1 pound sterling.)
Italy	Gold and silver	Lira	.193	Member of Latin Union; gold is the actual standard.
Japan	Gold	Yen	.498	
Liberia	do	Dollar	1.000	Currency: Depreciated silver token coins; customs duties are collected in gold.
Mexico	do	Peso	.498	Mexican exchange rate fluctuating and uncertain.
Netherlands	do	Florin	.402	
Newfoundland	do	Dollar	1.014	
Norway	do	Crown	.268	
Panama	do	Balboa	1.000	
Paraguay	Silver	Peso	.422	Currency: Depreciated paper, exchange rate 1,550 per cent.
Persia	Gold and silver	Kran	.1704	This is the value of the gold kran. Currency is silver circulating above its metallic value; exchange value of silver kran, approximately, $0.0875.
Peru	Gold	Libra	4.8665	
Philippine Islands	do	Peso	.500	
Portugal	do	Escudo	1.080	Currency: Inconvertible paper; exchange rate, approximately, $0.9394.
Roumania	do	Leu	.193	
Russia	do	Ruble	.515	
Santo Domingo	do	Dollar	1.000	

Estimate by Director of the Mint of the values of foreign coins—Continued.

Country.	Legal standard.	Monetary unit.	Value in terms of United States money.	Remarks.
Servia	Gold	Dinar	$0.193	
Siam	do	Tical	.3708	
Spain	Gold and silver	Peseta	.193	Valuation is for the gold peseta; currency is silver circulating above its metallic value; exchange value, approximately, $0.1794.
Straits Settlements	Gold	Dollar	.5677	
Sweden	do	Crown	.268	
Switzerland	do	Franc	.193	Member of Latin Union; gold is the actual standard.
Turkey	do	Piaster	.044	100 piasters equal to the Turkish £.
Uruguay	do	Peso	1.034	
Venezuela	do	Bolivar	.193	

(T. D. 34611.)

Certification of invoices.

Invoices of merchandise from Boma, Kongo, accepted when certified in the manner prescribed by section 2844 of the Revised Statutes.

TREASURY DEPARTMENT, *July 2, 1914.*

To collectors and other officers of the customs:

The department is in receipt of a letter from the Secretary of State, in which he states that the officer in charge of the consulate general at Boma, Kongo, has been sent on special detail to the Province of Angola, and that the consulate general will accordingly be closed temporarily for approximately six months from about the middle of July, 1914.

The Secretary of State expresses the opinion that any invoices covering shipments to the United States from Boma during the time the vice consul general is absent from his post may properly be accepted by United States customs officials if certified in accordance with the provisions of section 2844 of the Revised Statutes.

You are therefore hereby authorized to accept invoices covering shipments from Boma, Kongo, when certified in the manner prescribed by said section 2844 of the Revised Statutes.

(101802.) WM. P. MALBURN, *Assistant Secretary.*

(T. D. 34612.)

Refined camphor in tablets.

Refined camphor in two-thirds ounce tablets, packed in tin cans containing 24 tablets each, dutiable at the rate of 5 cents per pound under paragraph 36, tariff act of 1913.

TREASURY DEPARTMENT, *July 1, 1914.*

SIR: The department duly received your letter of the 10th ultimo, relative to the proper classification of refined camphor in two-thirds ounce tablets, packed in tin cans containing 24 tablets each.

It appears that there is a variance in practice in the classification of this merchandise. At your port it is assessed with duty at the rate of 5 cents per pound as refined camphor under paragraph 36 of the tariff act, while at another port it is assessed with duty at the rate of 20 per cent ad valorem under the first part of paragraph 17 of the tariff act, which provides that chemical and medicinal compounds, combinations, and all similar articles dutiable under the tariff act, whether specially provided for or not, put up in individual packages of 2½ pounds or less gross weight, shall be dutiable at not less than 20 per cent ad valorem.

Crude natural camphor is obtained by distilling the wood of camphor trees. The article is not a chemical, and, in the opinion of the department, the process of refining crude camphor does not produce a chemical or a medicinal compound, or a chemical or a medicinal preparation, as the product is simply camphor refined.

In view of the foregoing the department is of the opinion that refined camphor is excluded from classification under paragraph 17 of the tariff act, and it accordingly approves the practice at your port in assessing duty upon the same at the rate of 5 cents per pound under the specific provision in paragraph 36 of the said act for refined camphor.

Respectfully, WM. P. MALBURN,
(100171.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34613.)

Regulations governing the issuance of department circulars and circular letters.

[Circular No. 9.]

TREASURY DEPARTMENT, *July 1, 1914.*

To heads of bureaus, chiefs of divisions, Secretary's office, and others concerned:

Beginning with this date, department circulars and circular letters will be prepared and issued in accordance with the following rules:

1. Circulars promulgating rules and regulations *affecting the personnel* of the Treasury Department generally, circulars *establishing or changing departmental policies,* and circulars relating to *subjects which involve two or more bureaus or divisions* will be signed by the Secretary or Acting Secretary and will be issued as department circulars.

2. All circulars that are temporary in their nature or purely local in their application and signed by an assistant secretary, the head of

a bureau, or chief of division in the Secretary's Office will be issued as circular letters.

3. Department circulars will be numbered consecutively, without reference to the year in which published; and when a circular is given a number that number will remain permanent with respect to that circular, regardless of how often the circular is revised or reprinted.

4. Modifications or amendments of department circulars will be made by revising and republishing the original circulars instead of issuing supplementary circulars bearing other numbers. In cases where it is deemed inadvisable to follow this procedure exceptions may be made, but only with the approval of the Secretary or assistant secretary.

5. In order that these rules may be strictly enforced and that there may be uniformity in the classification of circulars and circular letters, the manuscript of all proposed department circulars and all circular letters will be checked by the Chief Clerk of the department before they are issued.

6. The Division of Printing and Stationery will be held responsible for the proper numbering of all department circulars.

7. The Secretary will be furnished by the Chief Clerk with copies of all department circulars and circular letters immediately upon their issuance.

W. G. McAdoo, *Secretary.*

(T. D. 34614.)

Entry of merchandise.

Information called for by Schedule E of the Department of Commerce to be given in the entry for all importations.

Treasury Department, *July 6, 1914.*

To collectors and other officers of the customs:

Pursuant to the provisions of paragraph F, section 3, of the tariff act of October 3, 1913, there has been prepared a list or enumeration of articles designated as Schedule E, classification of imported merchandise, and it has been declared by the Secretary of the Treasury and the Secretary of Commerce that this schedule contains the detail necessary to be given on goods imported into the United States, and that this information must be furnished upon entry of goods.

Collectors of customs will therefore require that the information called for by the said Schedule E be given hereafter in the entry for all importations.

(74263.) Wm. P. Malburn, *Assistant Secretary.*

(T. D. 34615.)

So-called wool felt.

Woven jute fabric with a cattle-hair facing and backing, the felt being placed on the jute while in a dampened condition, dutiable as a cloth made in chief value of cattle hair at the rate of 25 per cent ad valorem under paragraph 288, tariff act of 1913.

TREASURY DEPARTMENT, *July 6, 1914.*

SIR: I have to acknowledge the receipt of your letter of the 26th ultimo relative to the proper classification of so-called wool felt similar to the sample submitted. It appears that the article in question is a woven jute fabric with a cattle-hair facing and backing, the felt being placed on the jute while in a dampened condition and pressed. It further appears that cattle hair is the component material of chief value.

In the opinion of the department the merchandise in question, which has as its foundation a woven jute fabric, is not a felted fabric, and the department accordingly concurs in the views expressed by you that merchandise represented by the sample is properly dutiable as a cloth made in chief value of cattle hair at the rate of 25 per cent ad valorem under paragraph 288 of the present tariff act.

As there is no provision in the tariff act for other manufactures of cattle hair, the department is further of the opinion that by virtue of the similitude clause in paragraph 386 of the tariff act, the cloth under consideration, if cut out and sewn to the shape of rooms, ready for laying down, would also be dutiable at the rate of 25 per cent ad valorem as cloth made in chief value of cattle hair under paragraph 288 of the tariff act.

You will be governed accordingly.

Respectfully, WM. P. MALBURN,
(94112.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34616.)

Caustic potash.

Appeal directed from decision of the Board of United States General Appraisers of May 16, 1914, G. A. 7565 (T. D. 34457), involving the classification of caustic potash.

TREASURY DEPARTMENT, *July 6, 1914.*

SIR: I have to acknowledge the receipt of your letter of the 27th ultimo inviting attention to the decision of the Board of United States General Appraisers of May 16, 1914, G. A. 7565 (T. D. 34457), involving the classification of caustic potash.

In view of the importance of the issue, you are hereby requested to file, in the name of the Secretary of the Treasury, an application

with the United States Court of Customs Appeals for a review of the board's decision, in accordance with the provisions of subsection 29 of section 28 of the act of August 5, 1909.

Respectfully, WM. P. MALBURN,
(72545.) *Assistant Secretary.*
ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 34617.)

Drawback on wind shields.

Drawback on automobile wind shields manufactured by the Diamond Manufacturing Co., of Detroit, Mich., with the use of imported glass.

TREASURY DEPARTMENT, *July 8, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on automobile wind shields manufactured by the Diamond Manufacturing Co., of Detroit, Mich., with the use of imported glass.

The allowance shall not exceed the quantity of imported glass appearing in the exported wind shields, as shown by the sworn statement of the manufacturers, dated May 12, 1914, which is transmitted herewith for filing in your office.

Respectfully, WM. P. MALBURN,
(101006-10.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Detroit, Mich.*

(T. D. 34618.)

Drawback on talking machines.

Drawback on talking machines manufactured by the Crescent Talking Machine Co., of New York, N. Y., with the use of imported metal parts.

TREASURY DEPARTMENT, *July 10, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on talking machines designated as "Crescent," manufactured by the Crescent Talking Machine Co. (Inc.), of New York, N. Y., with the use of imported metal parts.

The allowance shall not exceed the number of imported metal parts appearing in the exported talking machines, as shown by the sworn statement of the manufacturers, dated June 23, 1914, which is transmitted herewith for filing in your office.

Respectfully, WM. P. MALBURN,
(102220.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34619.)

Drawback on flavoring extracts.

Drawback on flavoring extracts, including tinctures, manufactured by George Lueders & Co., of New York, N. Y., with the use of domestic tax-paid alcohol.

TREASURY DEPARTMENT, *July 10, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on flavoring extracts, including tinctures, manufactured by George Lueders & Co., of New York, N. Y., with the use of domestic tax-paid alcohol.

The allowance shall not exceed the quantity of domestic tax-paid alcohol used in the manufacture of the exported extracts, as shown by the sworn statement and schedule of the manufacturers, dated March 17 and June 13, 1914, which are transmitted herewith for filing in your office.

Respectfully, WM. P. MALBURN,
(92068.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34620.)

Drawback on nuts.

Drawback on shelled Brazil nuts produced by Habicht, Braun & Co., of New York, N. Y., from imported Brazil nuts in the shell.

TREASURY DEPARTMENT, *July 10, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on shelled Brazil nuts produced by Habicht, Braun & Co., of New York, N. Y., from imported Brazil nuts in the shell.

At the end of each period of six months a sworn abstract from a record which shall be kept shall be filed, which will show the quantity of imported nuts used during the preceding six months, the import data provided for in T. D. 31695 covering the same, the quantity of shelled nuts produced therefrom, and the quantity of waste incurred.

The allowance shall not exceed the weight of the shelled Brazil nuts exported, with an addition to compensate for waste predicated on the percentage of waste incurred during the period of production, as shown by the abstract from the record prescribed above.

The sworn statement of the manufacturers, dated June 24, 1914, is transmitted herewith for filing in your office.

Respectfully, WM. P. MALBURN,
(101920.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34621.)

Drawback on braids.

Drawback on braids manufactured by L. B. Simonds & Co., of New York, N. Y., with the use of imported visca after the same has been dyed for their account by the Wm. Teschemacher Co.

TREASURY DEPARTMENT, *July 10, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on braids manufactured by L. B. Simonds & Co., of New York, N. Y., with the use of imported visca, after the same has been dyed for their account by the Wm. Teschemacher Co., of Brooklyn, N. Y.

A record shall be kept by the Wm. Teschemacher Co., which will show the lot number and date of receipt of each lot of imported visca received from L. B. Simonds & Co. for dyeing, the net weight of such lot as received, and the net weight thereof after dyeing. A manufacturing record shall be kept by L. B. Simonds & Co., which will show, in addition to the usual import data, the lot number and date of manufacture of each lot of braid manufactured for exportation with benefit of drawback, the quantity of dyed visca appearing therein, and the dyer's lot number of the dyed imported visca used in the manufacture thereof. Sworn abstracts from such records shall be filed with each drawback entry.

The allowance shall not exceed the quantity of imported visca appearing in the exported braids as shown by the sworn abstracts from the records described above.

The sworn statements of L. B. Simonds & Co. and the Wm. Teschemacher Co., dated June 1 and June 6, 1914, respectively, are transmitted herewith for filing in your office.

Respectfully, WM. P. MALBURN,
(75904.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34622.)

Drawback on olives.

T. D. 33818 of October 28, 1913, extended to cover kitted olives produced by Austin Nichols & Co., of New York, N. Y., from olives imported in bulk.

TREASURY DEPARTMENT, *July 11, 1914.*

SIR: The department's regulations of October 28, 1913 (T. D. 33818), providing for the payment of drawback on kitted olives produced by R. C. Williams & Co., of New York, N. Y., from olives imported in bulk, are hereby extended to cover kitted olives produced

by Austin, Nichols & Co., of New York, N. Y., from olives imported in bulk. The sworn statement of the producers, dated June 22, 1914, is transmitted herewith for filing in your office.

Respectfully, WM. P. MALBURN,
(94403-4.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34623.)

Common carrier.

Approving bond of the Minnesota, Dakota & Western Railway Co. as a common carrier for the transportation of appraised and unappraised merchandise in bond.

TREASURY DEPARTMENT, *July 11, 1914.*

SIR: The department has received your letter of the 1st instant, with which was inclosed a bond in duplicate of the Minnesota, Dakota & Western Railway Co. as a common carrier for the transportation of merchandise under sections 3000, 3001, 3005, and 3006 of the Revised Statutes and the act of June 10, 1880, and all other acts relating thereto governing the transportation of imported merchandise without appraisement.

The bond is approved, and a copy thereof is herewith inclosed to be placed upon your files.

Respectfully, WM. P. MALBURN,
(102268.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Duluth, Minn.*

(T. D. 34624.)

Cattle-hair cloth and zibeline or ripple cloth.

Cattle-hair cloth containing small percentage of mohair dutiable at the rate of 25 per cent ad valorem under paragraph 288, tariff act of 1913; zibeline or ripple cloth dutiable at the rate of 40 per cent ad valorem under paragraph 308 of said act.

TREASURY DEPARTMENT, *July 10, 1914.*

SIR: The department duly received your letters of May 13 last, relative to the proper classification of cattle-hair cloth and zibeline or ripple cloth.

It appears that the cattle-hair cloth contains approximately 5 per cent of wool waste, and that of this wool waste a small percentage is mohair; that the zibeline or ripple cloth is composed of mohair and cotton, mohair chief value, and that the plush effect is produced on the surface of each of the cloths by teaseling. It further appears that it is the practice at your port to assess duty upon the cattle-hair cloth at the rate of 25 per cent ad valorem under paragraph 288 of the tariff act, and at the rate of 40 per cent ad valorem upon the zibeline or ripple cloth under paragraph 308 of the said act. The opinion ex-

pressed by you that cloths of the character under consideration, although resembling plushes, do not answer the technical definition of pile fabrics, for the reason that no extra warp or weft threads were looped in the process of weaving, is in harmony with the views expressed by the Board of United States General Appraisers in G. A. 7572 (T. D. 34545), as will appear from the following quotations from the said decision:

As ordinarily understood, a pile fabric is a fabric in which a soft covering or nap overspreads and conceals to a great extent the interlacing of the warp and filling threads. This nap is formed by a series of threads which issue from the body of the fabric at right angles. In some fabrics the nap or pile is in the form of a series of loops, such as we find in Brussels carpet, while in others the ends of the threads are cut or sheared off smoothly so as to form a uniform and even surface, presenting the ends of the fiber to the eye, as is ordinarily found in velvets, velveteens, plushes, velours, etc.

From an examination of the authorities on textile weaving it appears that in the weaving of every pile fabric one series of threads, either warp or filling, is employed for producing the ground of the fabric, while a second series forms the pile; so that two distinct systems of warp or of filling threads are always necessary in the manufacture of such goods. * * * If it is desired to make a cut-pile fabric, a knife is attached to the extreme end of each wire, and when the wire is withdrawn it cuts each loop thread, thereby forming a fabric having a cut pile. If an uncut pile is desired, a wire which does not have a knife at the end is used in the loom, and this may be withdrawn without cutting the loops. Sometimes the loops are cut by a shearing process after the fabric has been taken from the loom. Whether the pile is cut or uncut, the structure of the cloth is the same; it is merely a question of using a knife or not.

Certain domestic manufacturers, however, contend that the fabrics are in fact plushes, are so know commercially, and are therefore properly dutiable at the rate of 45 per cent ad valorem under paragraph 309 of the tariff act, this paragraph providing that rate of duty upon plushes, velvets, and all other pile fabrics cut or uncut, made wholly or partly of the hair of the Angora goat, alpaca, or other like animal.

While it appears that the cloths under consideration are commercially known as plushes, this fact does not control the classification thereof, for the reason that in the department's opinion the term "plushes and pile fabrics," as used in paragraph 309, is a descriptive term, and covers only pile fabrics which are susceptible of being cut; and has no relation to fabrics upon which have been produced plush effects by teaseling. Note the decision of the United States Supreme Court in United States *v.* Downing (201 U. S., 354) that the provision in paragraph 97 of the tariff act of 1897 that articles if decorated should take one rate and if not decorated another rate related only to articles susceptible of decoration.

As persuasive of the correctness of the department's views in this connection, your attention is invited to the board's decision reported in Abstract 23987 (T. D. 33944), wherein it was held that certain merchandise described as imitation plush, and which consisted of a

plain woven fabric with one surface napped or teaseled to produce an effect similar to a pile or plush, fell directly within the provision in paragraph 320 of the tariff act of August 5, 1909, for "woven fabrics of cotton, * * * cut in lengths."

In view of the foregoing, the department approves your practice in assessing duty upon the cattle-hair cloth above referred to at the rate of 25 per cent ad valorem under paragraph 288 of the tariff act, and your classification of the zibeline or ripple cloth under paragraph 308 at the rate of 40 per cent ad valorem.

Respectfully, WM. P. MALBURN,
(101696.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34625.)

Plant quarantine act.

Collectors instructed relative to the observance of the general regulations under the plant quarantine act issued by the Department of Agriculture, July 1, 1914.

TREASURY DEPARTMENT, *July 11, 1914.*

To collectors and other officers of the customs:

Your attention is invited to copies of a circular entitled "Rules and regulations under the plant quarantine act: General, including nursery stock," issued by the Department of Agriculture on July 1, 1914, which have been forwarded to you and by which you will be governed.

The Secretary of Agriculture states that this publication supersedes circular No. 44 (T. D. 33765); that no radical changes have been made in these regulations, but that plant quarantine decision No. 4, issued July 17, 1913, as an amendment to regulation 7 is included, and provision made under regulation 6 for the cancellation of permits and the refusal to issue further permits for importations from any foreign exporter who, after warning, continues to send packages not properly certified.

WM. P. MALBURN, *Assistant Secretary.*

(T. D. 34626.)

Drawback on copaiba.

Drawback on cleansed and purified copaiba and essential oil of copaiba manufactured by the Dodge & Olcott Co., of New York, N. Y., with the use of imported crude copaiba.

TREASURY DEPARTMENT, *July 13, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on cleansed and purified balsam

copaiba and essential oil of copaiba manufactured by the Dodge & Olcott Co., of New York, N. Y., with the use of imported copaiba.

A manufacturing record shall be kept, which will show, in addition to the usual import data, the lot number and date of manufacture of each lot of cleansed and purified copaiba and each lot of essential oil of copaiba manufactured for exportation with benefit of drawback, the quantity and value of the imported crude copaiba of each grade used, the quantity of the finished product obtained, and the quantity and value of the waste incurred. A sworn abstract from such manufacturing record shall be filed with each drawback entry.

The allowance shall not exceed the quantity of imported crude copaiba used in the manufacture of the exported cleansed and purified copaiba or essential oil of copaiba, as shown by the abstract from the manufacturing record, the allowance to be reduced according to the quantity of imported crude copaiba which the value of the waste will replace.

The sworn statement of the manufacturers, dated June 23, 1913, is transmitted herewith for filing in your office.

Respectfully, WM. P. MALBURN,
(102115.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34627—G. A. 7584.)

Wafers—Biscuits—Confectionery.

1. WAFERS—CONFECTIONERY.

Huntley & Palmer "sugar wafers," consisting of two thin layers of baked material, between which is a sweet filling composed of sugar, water, flavoring, and perhaps some egg, are dutiable under the provision in paragraph 194, tariff act of 1913, for "wafers * * * containing * * * confectionery," and are not free of duty under paragraph 417 as "wafers not specially provided for."

2. BISCUITS WITH ICING—CONFECTIONERY.

Small biscuits or cakes of different shapes and known by different names, some of which are iced on one side with a substance similar to the filling in the "sugar wafers" above described, are held not to contain confectionery, and are therefore not dutiable under paragraph 194, but are free of duty under paragraph 419.—Dutton *v.* United States (154 Fed., 214; T. D. 27983) followed.

United States General Appraisers, New York, July 3, 1914.

In the matter of protest 727076 of Thos. Meadows & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

WAITE, *General Appraiser:* The questions to be determined in this case arise over the importation of what is termed "Huntley & Palmer biscuits." We have before us 10 samples involved in the case, representing as many different varieties, and they are marked as exhibits

from 1 to 10, inclusive. All the goods have been assessed for duty under paragraph 194, tariff act of 1913, which reads as follows:

194. Biscuits, bread, wafers, cakes, and other baked articles, and puddings, by whatever name known, containing chocolate, nuts, fruit, or confectionery of any kind, and without regard to the component material of chief value, 25 per centum ad valorem.

It is claimed by the importers that the goods should be admitted free of duty under paragraph 417, which reads:

417. Biscuits, bread, and wafers not specially provided for in this section.

It will be observed that the law provides that articles described as biscuit, bread, wafers, cakes, and other baked articles and puddings when containing chocolate, nuts, fruit, or confectionery of any kind shall pay a duty of 25 per cent ad valorem, and this without regard to the component material of chief value, intending, in our judgment, to include in the class of dutiable articles under this section all such as contain an appreciable or substantial amount of any of the enumerated component materials.

There is no testimony which enlightens us as to whether there is any chocolate in any of these biscuits. The color of some of them might indicate that, but this might arise from other coloring substances. No claim upon this point appears to have been made by the Government. No one of the varieties contains either nuts or fruit. It is claimed, however, by the Government that certain of these goods contain confectionery.

Exhibits 1, 2, 3, and 4 are termed "sugar wafers," and may be described as two thin layers of biscuit of a rectangular shape, about 1¾ inches by 3½ inches, between which is a layer of some substance, described as a paste consisting of sugar, water, flavoring, and perhaps some egg. It is sweet to the taste and appears to have been added to enhance the sweetness of the article and make it more palatable. If this sweetened paste were separated and by itself in a confectioner's shop, we are satisfied it would be considered confectionery. We therefore hold that the goods represented by Exhibits 1, 2, 3, and 4 are dutiable as assessed under paragraph 194.

Exhibit 5, described on the invoice as "Pantomime," is a mixture of fancy-shaped biscuits of various sizes, ranging from one-half inch to 1½ inches in dimensions. These articles are of a stiff homogeneous structure and may be described as biscuits to distinguish them from the above-mentioned articles known as wafers. They are hard and brittle and, perhaps, might be more accurately described as cookies or small cakes. They are sweetened and about one in five, or 20 per cent of a package, has a coating or icing over one of the surfaces, apparently of the same or similar material to that used as a filling in the wafers. It is somewhat thicker, however, and appears to have been pressed upon the surface, where it has hardened and closely

attached to the body of the cake. It is not mixed through the article, and, in our judgment, if separated from the cake and made into various shapes, might properly be termed "confectionery." About 20 per cent of the pieces having been treated in this way, the quantity, in our judgment, would not be negligible; and if, within the meaning of the terms of the statute, this icing is "contained" in the biscuit, this class would be dutiable as assessed. The question whether this surfacing or icing may be considered contained in the commodity is not without difficulty. A similar question arose, however, under the law of 1897 in G. A. 6579 (T. D. 28126). The board had under consideration there paragraph 400 of the tariff act of 1897, where it became necessary to determine whether certain books for children contained illuminated lithographic prints. It appears that they contained no such prints, except one upon the outside cover of the book. The question turned upon the meaning of the word "containing." In G. A. 5858 (T. D. 25803) the board held that books having no lithographic prints except one on the outer cover contained a lithographic print. The court, in Dutton *v.* United States (154 Fed., 214; T. D. 27983), reversed the board, holding to the contrary, and in G. A. 6579, *supra*, the board, having the same question before it, followed the decision of the court, which decision of the board was not appealed from. We think that the rule there laid down is applicable here and that the confectionery placed upon the surface of these biscuits does not fulfill the requirement of the statute of being contained in the biscuit. We therefore hold that the assessment of the collector as to the goods represented by Exhibit 5 is wrong. The protest is sustained as to this article.

What has been said of Exhibit 5, the biscuit called "Pantomime," is also true of Exhibit 6, representing the item described as "Household," which consists of small sweet biscuits of various shapes with about the same percentage of frosting or glazing as upon the "Pantomime."

Exhibit 7 represents what is described on the invoice as "Café noir," a hard, oblong biscuit about 1 inch by 1½ inches in dimensions and three-eighths of an inch thick, having upon one surface the same icing above described. Our holding with reference to that is the same as in the case of Exhibits 5 and 6.

Exhibit 8, known as "Algeria," is the same as Exhibit 7, except that it is a different shape. These goods are uniform in size and shape and of about the same consistency as "Café noir," "Household," and "Pantomime." The protest is sustained as to Exhibit 8.

Exhibit 9, called "Henley," is an almond-shaped biscuit, the cake part being of the same consistency as the wafers, and, as stated above, is the shape of an almond separable about the middle line. It is rather a thin shell of biscuit filled with what appears to be a sugary

substance containing flavoring and possibly some other material to give it a moist, soft consistency.

Exhibit 10, called "Carmencita," is a cigarette-shaped pastry or cake of the same consistency and appearance as the outside of the wafer and almond. It is in the form of a tube, through the center of which longitudinally is a substance similar to that forming the center of the almond, and considerable in quantity when compared to the whole article. These are about 2½ inches long and very sweet to the taste.

We think the goods represented by Exhibits 9 and 10 contain confectionery. The finding of the collector is affirmed and the protest overruled with reference to these goods.

In conclusion, then, we hold that the finding of the collector is correct as to the goods represented by Exhibits 1, 2, 3, 4, 9, and 10; and the protest is sustained as to the goods represented by Exhibits 5, 6, 7, and 8. Reliquidation will be made accordingly.

Illustrative Exhibit A was introduced at the hearing as representing an item upon the invoice known as sugar wafers, vanilla flavor, but not mentioned in the protest. No finding will be made, therefore, upon this item. Had it been embraced in the protest the finding would have been the same as that upon the goods represented by Exhibits 1, 2, 3, and 4, as it is a sugar wafer of the same kind and nature.

The protest was abandoned at the hearing with reference to the goods described at "Sweet Assorted." The protest is therefore overruled as to that article.

(T. D. 34628—G. A. 7585.)

Powdered glass—Abrasives—Waste.

Powdered glass generally used in the manufacture of match heads and occasionally in the manufacture of abrasives held dutiable as a manufacture of glass not specially provided for under paragraph 109, and not as a crude artificial abrasive under paragraph 432, nor as waste under paragraph 479, tariff act of 1909.

United States General Appraisers, New York, July 3, 1914.

In the matter of protests 718923, etc., of Chas. B. Chrystal against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers).

Sullivan, *General Appraiser:* The merchandise in question consists of powdered glass, generally used in the manufacture of match heads and occasionally in the manufacture of abrasives. It was returned for duty as a manufacture of glass not specially provided for at 45 per cent ad valorem under paragraph 109 of the tariff act of 1909. It is claimed dutiable under the last clause of paragraph 432

as an abrasive at 10 per cent ad valorem, or under paragraph 479 as "waste, not specially provided for in this section," at 10 per cent ad valorem.

The evidence without contradiction discloses that the merchandise is powdered glass used in match heads or on the sides of the boxes where the matches are struck. It being admitted that it is glass, and it being invoiced as powdered glass, the question at issue can be plainly stated: Has it lost its character as a manufacture of glass by reason of its present condition?

The paragraph under which this merchandise was classified declares:

> 109. Stained or painted glass windows, or parts thereof, * * * and all glass or manufactures of glass or paste or of which glass or paste is the component material of chief value, not specially provided for in this section, forty-five per centum ad valorem.

Paragraph 432, with reference to abrasives, states as follows:

> 432. Emery grains and emery, manufactured, ground, pulverized, or refined, * * * crude artificial abrasives, ten per centum ad valorem.

Paragraph 479 referred to in the protests is not applicable to the merchandise in this case.

It is shown by the testimony that this article is made of plate glass, window glass, or bottles ground and put through sieves. In this condition is it glass or a manufacture thereof, or abrasives, within the terms of the statute? The testimony shows that this merchandise in powdered form can not be used upon the heads of matches or the sides of boxes without mixing with sulphur and other ingredients to form a compound. But we are not dealing with this mixture; we are dealing with the article in the form in which it is invoiced; and in whatever condition it may be, glass is the component material of chief value. A review of the authorities will not only be of interest, but in our opinion will satisfactorily classify the merchandise. In G. A. 4138 (T. D. 19311) the merchandise under consideration consisted of 150 bags of broken glass fit only for remanufacture, classified under paragraph 112 of the act of 1897. That paragraph was exactly similar to paragraph 109, and it was there held by the board:

> We find that the merchandise is (1) glass and (2) junk; but as there is no limitation to sound glass in paragraph 112, we must hold that the provision for glass is more specific than that for junk.

That authority is the first we have been able to find wherein the board has passed upon a question similar to this.

In G. A. 5741 (T. D. 25477) the Board of General Appraisers was passing on window glass broken in transit prior to arrival in this country, but which was fit for remanufacture at the time of arrival. It was there held that the merchandise was not entitled to free entry as an article of no commercial value and worthless within the principle

laid down in Lawder *v.* Stone (187 U. S., 281; 23 Sup. Ct. Rep., 79), merely because it became mixed with dirt and refuse in the warehouse of the importer after the cases containing it were unpacked, but that at the time of its importation it possessed some commercial value, being fit for remanufacture.

G. A. 5982 (T. D. 26207) was with reference to glass reduced to a coarse powder by a process of crushing. The merchandise was of different colors and evidently intended for decorative purposes. It was held dutiable at 45 per cent ad valorem as a manufacture of glass under paragraph 112 of the act of 1897. In holding the merchandise a manufacture of glass the board cited United States *v.* Meier (136 Fed., 764; T. D. 25973), wherein it was held that flitters, consisting of thin sheets of composite metal reduced to a granulated or powdered condition, were dutiable as a manufacture of metal.

In G. A. 7249 (T. D. 31773) it was held that iron sand, grit, or shot, usable and actually used for purposes other than abrasives, was excluded from the provision in paragraph 133, tariff act of 1909, for "grit, shot, and sand * * * that can be used only as abrasives," and that to come within said provision the merchandise must have no practical utility other than as abrasives; that sand, grit, or shot made of iron for use as an abrasive is not crude nor artificial within the meaning of paragraph 432 of the tariff act of 1909, but is a manufactured article and dutiable as a manufacture of metal under paragraph 199 of said act.

This line of authorities satisfies the board that the merchandise in question is not crude artificial abrasives; that it remains in the condition in which imported as powdered glass, and therefore comes within the *eo nomine* definition provided for in paragraph 109.

The Century Dictionary defines an abrasive as tending to produce abrasion, having a property of abrading, or any material having abrading qualities—an abradant. The Oxford Dictionary defines an abrasive as having the property of abrading—to abrade, as to rub or wear off; abraded, rubbed off, removed by friction; abrasing, act of scrubbing or rubbing off.

The statute has reference to crude artificial abrasives. This certainly could not be within the contemplation of the use of powdered glass. The testimony discloses it was not catalogued as an abrasive; it was not sold as such; it was only used in connection with other compounds to form what may be called an abrasive, wherein by the use of friction—as by the match on the box—it could become an article of utility; but in the form of powdered glass it is not an abrasive, but would be more surely denominated a manufacture of glass.

In G. A. 7249 (T. D. 31773), *supra*, the board, in our opinion, properly announced the rule to be followed with reference to this class of merchandise when it held Congress undoubtedly had in mind

in using the term "crude artificial abrasives" an article like carborundum in the form in which it leaves the electric furnace, used as a substitute for emery and corundum. Certainly that term would not apply to the merchandise in question.

We are satisfied the collector s classification was correct. His action is affirmed and the protests overruled.

(T. D. 34629.)

Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, Somerville, and Hay.

BEFORE BOARD 2, JULY 3, 1914.

No. 36066.—SILK HAIR NETS—LEVER OR GOTHROUGH MACHINES—JACQUARD ATTACHMENT.—Protests 642290, etc., of Mills & Duflot (New York).

HOWELL, *General Appraiser:* The merchandise in question consists of silk hair nets made in or near Lyons, France. They were assessed for duty at the rate of 70 per cent ad valorem under the provision for "nets, nettings, * * * composed of * * * silk, * * * made on the Lever or Gothrough machine," in paragraph 350, tariff act of 1909. The importers deny that the goods were made on the Lever or Gothrough machine, and claim that they are properly dutiable at the rate of 60 per cent ad valorem under the provision for "nets or nettings" in paragraph 402 of said act.

The record contains the depositions of a number of witnesses offered both by the importers and the Government, and also includes the testimony of several witnesses who appeared in person before the board. The only issue in the case is whether or not these hair nets were made on the Lever or Gothrough machine. If they were made on such a machine, then the assessment as made by the collector was correct. If they were not made on the Lever or Gothrough machine, the claim of the importers must be sustained. To support their contention that the goods were not made on the Lever or Gothrough machine the importers have produced the depositions of three witnesses taken in Lyons, France, upon interrogatories and cross-interrogatories. Two of these witnesses were superintendents of the factories where the nets here in question were manufactured and the third witness was a member of one of the firms exporting the goods to the United States. Each witness has testified that he is familiar with the hair nets in these importations; that said hair nets were manufactured either on plain net machines or on what is known as the "Grande Vitesse" machine, and that none of them were manufactured on the Lever or Gothrough machine.

The Government contends, however, that the machines on which the nets were made have all the characteristics of a Lever or Gothrough machine, and therefore these nets should be held to have been made on such a machine. To support this contention the depositions of three witnesses, residents of Lyons, France, have been produced. These witnesses were not in any way connected with the manufacture of the nets here in question, and, of course, were not able to testify as to the machines on which the nets were made. But they were interrogated at great length regarding the character of machines used in making hair nets, and particularly as to whether or not the Jacquard attachment is an essential feature of the Lever or Gothrough

machine, the purpose apparently being to show that without such an attachment a machine may nevertheless be a Lever or Gothrough machine.

The Lever machine was invented by John Lever, of Nottingham, England, in 1813. The Gothrough machine consists of a Lever loom with an improvement which varies the "catch-bar" motion in such a way as to materially increase the working speed of the loom. In all other essential respects the two machines are similar; and they are especially adapted for the manufacturing of laces, nets, veilings, and other similar articles where fancy designs are desired. Whether or not these machines originally used the Jacquard attachment to control the movement of the warp threads in forming the design in the fabric being produced may be open to question, but we think it clearly appears from the record that at the time of the passage of the tariff act of 1909, and for many years prior thereto, the machine which the trade recognized as the Lever or Gothrough machine was operated with a Jacquard attachment.

For the first time in the history of tariff legislation Congress, in the act of 1909, specifically recognized the Lever or Gothrough machine and the products thereof. In paragraph 197 of said act it was provided that "Lever and Gothrough lace-making machines, * * * imported prior to January first, nineteen hundred and eleven," should be admitted free of duty; and paragraph 350 provided a rate of duty of 70 per cent ad valorem on laces, embroideries, nets, nettings, and other articles therein mentioned made on the Lever or Gothrough machine.

It appears from the testimony of the examiner of machinery at the port of New York, who was called as a witness in this case, that in addition to making an advisory classification of machinery at his home port, he also acts in an advisory capacity in the classification of similar merchandise entered at other ports, and that he never returned or advised the return as free of duty under the provision in paragraph 197 above cited any machine claimed to be a Lever or Gothrough machine, unless it had a Jacquard attachment. In other words, he did not consider the machine a Lever or Gothrough machine if it was imported without the Jacquard attachment; and his view was approved by the board in American Express Company's case, Abstract 31424 (T. D. 33217).

We think the testimony of the witnesses in this case as to the character of the Lever or Gothrough machine tends to confirm the view we took in that case.

* * * * * * *

From a careful review of the whole record we think it clearly appears that the only machine which the trade has recognized for many years past as the Lever or Gothrough machine is one equipped with the Jacquard attachment, and we have no doubt this was the machine Congress had in mind when making provision for the free entry of Lever and Gothrough machines for a limited period and levying a high rate of duty on the products of such machines. During the life of the provision for the free admission of Lever and Gothrough machines (paragraph 197) the Government contended that only those machines equipped with a Jacquard attachment were entitled to the benefit of that provision, and that contention was sustained by the board in American Express Company's case, *supra*. And in Finlay's case, Abstract 24701 (T. D. 31255), which involved the classification of plain nets commonly known as "Mechlins" or "Malines," we said:

> We learn from the testimony that the Lever and Gothrough machines are practically identical, varying slightly only in the "catch-bar" motion, and that they are always operated with the Jacquard attachment. As the Jacquard attachment is not required in the making of Malines or Mechlins, the Lever or Gothrough machine could only be adapted for use in the making of such nets by readjustment at considerable expense without any compensating advantages in manufacturing. It appears, therefore, that these nets may be made to better advantage and at less cost on the Mechlin machine.

The nets here in question are the ordinary plain hair nets, and while it would be possible to make them on a machine with the Jacquard attachment, just as it would

be possible to make the Malines on such a machine because of the adaptability of that attachment, yet there would be no advantage in making them on such a machine. On the contrary, it would be positively disadvantageous, as they would be made less rapidly and consequently the cost of production would be increased. There are hair nets which, because of certain special characteristics, are required to be manufactured on a machine with a Jacquard attachment, such nets, for exampe, as those containing holes of graduated size in the same net. Such nets are necessarily made on the Lever or Gothrough machine. According to the testimony there are no such nets involved in the importations here in question.

We find that the hair nets covered by Schedule A were not made on the Lever or Gothrough machine. The claim in the protests that these nets are properly dutiable under paragraph 402 at the rate of 60 per cent ad valorem is sustained, and the decision of the collector in each case is modified accordingly. * * *

BEFORE BOARD 1, JULY 7, 1914.

No. 36067.—NOVELTY SIDING—BEADED LUMBER.—Protests 732915, etc., of F. W. Myers & Co. et al. (Ogdensburg and Burlington). Opinion by McClelland, G. A.

Novelty siding and beaded lumber produced by a planer and matcher, classified as manufactures of wood under paragraph 176, tariff act of 1913, were held entitled to free entry under paragraph 647. G. A. 7546 (T. D. 34305) followed.

No. 36068.—SPONGES.—Protests 730446, etc., of Leousi, Cloney & Co. (New York). Opinion by McClelland, G. A.

Sponges not bleached or advanced in value by processes involving chemical operations were held dutiable at 10 per cent under paragraph 68, tariff act of 1913, as claimed.

No. 36069.—SANDSTONE—BUILDING STONE.—Protests 712274, etc., of German-American Stoneware Works (New York). Opinion by McClelland, G. A.

Protests overruled as to blocks of sandstone classified as building stone under paragraph 114, tariff act of 1909.

No. 36070.—WOOL ARTICLES IMPORTED BETWEEN OCTOBER 3, 1913, AND JANUARY 1, 1914.—Protest 740167 of James McCutcheon & Co. (New York). Opinion by Brown, G. A.

Articles of wearing apparel composed of wool imported on October 7, 1913, classified under paragraph 382, tariff act of 1909, were claimed dutiable as nonenumerated manfactured articles under paragraph 385, tariff act of 1913. Protest overruled, the board holding that by the express terms of the provision in paragraph 310, tariff act of 1913, the merchandise is dutiable as wool wearing apparel under paragraph 382, tariff act of 1909, as classified.

No. 36071.—BETA NAPHTHAL.—Protest 697746 of Pfaltz & Bauer (New York). Opinion by Brown, G. A.

Beta naphthal classified as a medicinal preparation under paragraph 65, tariff act of 1909, was claimed to be used only by rubber manufacturers and entitled to free entry as a product of coal tar naphthal (par. 536). Protest overruled, the board finding the commodity here under consideration is used in medicine as an antiseptic and is different from alpha naphthal or naphthol.

No. 36072.—VACCINE VIRUS.—Protests 700795, etc., of C. Bischoff & Co. (New York). Opinion by Brown, G. A.

On the authority of G. A. 7538 (T. D. 34244) and Abstract 35237 (T. D. 34321) tuberculin serum, classified as a medicinal preparation under paragraph 65, tariff act of 1909, was held entitled to free entry as vaccine virus (par. 704).

No. 36073.—RADIOACTIVE MEDICINE.—Protest 706639 of Morganstern & Co. (New York). Opinion by Brown, G. A.

A preparation possessing radioactive properties, classified as a medicinal preparation under paragraph 65, tariff act of 1909, was held entitled to free entry as radium (par. 659). G. A. 7524 (T. D. 34052) followed.

No. 36074.—GUAIACOL CRYSTALS—MEDICINAL PREPARATION.—Protest 707003 of Hensel, Bruckmann & Lorbacher (New York). Opinion by Brown, G. A.

Guaiacol crystals classified under paragraph 65, tariff act of 1909, as a medicinal preparation in the manufacture of which alcohol was used, reported to be known as a remedy for bronchial and other throat diseases, were claimed to be nonalcoholic, dutiable under paragraphs 3, 65, or 20. Protest overruled, the board holding that from the evidence it was impossible to find that the article was manufactured without the use of alcohol.

No. 36075.—CHEMICAL COMPOUND—SULPHIDE OF ANTIMONY.—Protest 726677 of Pitt & Scott (New York). Opinion by Brown, G. A.

Sulphide of antimony classified as a chemical salt under paragraph 3, tariff act of 1909, was claimed dutiable as antimony (par. 173). Protest overruled. G. A. 4231 (T. D. 19901) cited.

No. 36076.—APPETITSILD.—Protest 534158 of Menzel & Co. (New York). Opinion by Brown, G. A.

On the authority of United States *v.* Haaker (4 Ct. Cust. Appls., 471; T. D. 33884) appetitsild was held dutiable under paragraph 272, tariff act of 1909, as claimed.

No. 36077.—FISH IN OIL—FISH BALLS.—Protests 665047, etc., of Strohmeyer & Arpe Co. et al. (New York). Opinion by Brown, G. A.

Protests overruled as to fish in oil and fish balls classified under paragraph 270, tariff act of 1909. Smith *v.* United States (5 Ct. Cust. Appls., —; T. D. 34008) and Benson *v.* United States (4 Ct. Cust Appls, 467; T. D. 33882) followed.

No. 36078.—FISH IN TINS—HERRINGS.—Protests 665197, etc., of Henry W. Peabody & Co. (New York). Opinion by Brown, G. A.

Herrings in tomato sauce were held dutiable as herrings, pickled, salted, smoked, or kippered under paragraph 272, tariff act of 1909. Salmon and mackerel were held dutiable under paragraph 273, as claimed.

No. 36079.—CAPACITY OF SARDINE TINS.—Protest 715147 of E. H. Bailey & Co. (Philadelphia). Opinion by Brown, G. A.

Protest sustained claiming the capacity of certain sardine tins to be 7½ cubic inches or less, under paragraph 270, tariff act of 1909.

No. 36080.—PROTESTS OVERRULED.—Protest 738687 of Lehn & Fink and protest 740169 of Moos & Co. (New York). Opinions by Brown, G. A.

Protests unsupported; overruled.

BEFORE BOARD 3, JULY 7, 1914.

No. 36081.—ARTISTIC ANTIQUITIES.—Protests 726037, etc., of United States Express Co. (New York). Opinion by Waite, G. A.

Certain artistic antiquities were held entitled to free entry under paragraph 717, tariff act of 1909. Protests sustained in part.

BEFORE BOARD 1, JULY 9, 1914.

No. 36082.—IMITATION PRECIOUS STONES—BEADS.—Protest 667278 of Siegman & Weil (New York). Opinion by Sullivan, G. A.

Protest overruled as to imitation precious stones with foil backs pierced with two vertical holes, designed to be sewn on wearing apparel, classified as manufactures of metal and paste under paragraphs 199 and 109, tariff act of 1909, the evidence not showing the merchandise to be suitable for use in the manufacture of jewelry (par. 449) or as beads (par. 421), as claimed.

No. 36083.—AMETHYST BEADS—AGATE GUIDES.—Protests 458658, etc., of A. Lorsch & Co. (New York). Opinion by Sullivan, G. A.

Amethyst beads classified as manufactures of agate under paragraph 112, tariff act of 1909, were held dutiable as precious stones, cut (par. 449), as claimed. Agate guides for use on fishing rods were held dutiable as manufactures of agate (par. 112), rather than as fishing tackle or parts thereof (par. 165). G. A. 7385 (T. D. 32766) followed.

No. 36084.—RAW FUR SKINS.—Protest 726724-45437 of G. W. Sheldon & Co. (Chicago). Opinion by Sullivan, G. A.

Fox and marten skins classified as fur skins dressed, under paragraph 439, tariff act of 1909, found to be raw skins not treated further than necessary for preservation, were held entitled to free entry under paragraph 573 or 574.

No. 36085.—HERRINGS.—Protests 496239, etc., of K. Marks & Co. et al. (New York). Opinion by Brown, G. A.

Herrings in tomato sauce were held dutiable under paragraph 272, tariff act of 1909, on the authority of United States *v.* Smith (4 Ct. Cust. Appls., 70; T. D. 33312).

No. 36086.—FISH IN HALF BARRELS.—Protest 704182 of Kildall Fish Co. (Minneapolis). Opinion by Brown, G. A.

On the authority of the United States *v.* Miller (5 Ct. Cust. Appls., —; T. D. 34443) anchovies in half barrels were held dutiable as herrings, pickled, under paragraph 272, tariff act of 1909.

No. 36087.—COTTON COUCH COVERS.—Protests 609513, etc., of M. H. Rogers et al. (New York). Opinion by Brown, G. A.

Cotton couch covers, table covers, etc., classified as rugs of cotton under paragraph 393, tariff act of 1909, were held dutiable at the appropriate rate under paragraph 325. Abstract 29791 (T. D. 32830) followed.

No. 36088.—PROTESTS OVERRULED.—Protest 741588 of Wm. A. Brown & Co. (New York). Opinion by Brown, G. A.

Protest unsupported; overruled.

BEFORE BOARD 2, JULY 9, 1914.

No. 36089.—ELASTIC CORDS AND WEBBINGS.—Protests 548332, etc., of Dieckerhoff, Raffloer & Co. (New York). Opinion by Howell, G. A.

Elastic cords and webbings were held dutiable according to the component materials of chief value as follows: (1) Cotton, under paragraph 349, tariff act of 1909; (2) artificial silk (par. 405); (3) india rubber (par. 463); (4) silk (par. 401). Abstract 25606 (T. D. 31616) followed.

No. 86090.—Ribbons, Picot Edge.—Protest 592223-41012 of Gage Bros. & Co (Chicago). Opinion by Howell, G. A.

Ribbon with picot edge made of a series of loops, classified under paragraph 402, tariff act of 1909, as trimmings in chief value of silk, were claimed dutiable as silk ribbons with fast edges (par. 401). Protest sustained, the board holding that the loops served the purpose of making a fast edge and preventing unraveling.

No. 86091.—Silk Cords.—Protest 641517 of W. B. Quaintance (New York). Opinion by Howell, G. A.

Protest overruled as to silk cord classified under paragraph 401, tariff act of 1909.

No. 86092.—Basket Bags.—Protest 682968 of K. Kawaguchi (New York). Opinion by Howell, G. A.

Protest overruled as to basket bags having a bamboo basket for the foundation, to which is attached a piece of cotton cloth with a drawing cord running through rings fastened to the upper part of the bag, lined with cotton, classified under paragraph 349, tariff act of 1909, the evidence not showing the component material of chief value. United States *v.* Vantine (4 Ct. Cust. Appls., 516; T. D. 33937) followed.

No. 86093.—Cotton Velvet.—Protest 735215 of O. G. Hempstead & Son (Philadelphia). Opinion by Howell, G. A.

Cotton velvet classified as silk velvet ribbon under paragraph 399, tariff act of 1909, was held dutiable under paragraph 325, as claimed.

No. 86094.—Silk Veilings.—Protest 713208 of E. & Z. Van Raalte (New York). Opinion by Howell, G. A.

Merchandise classified as all silk, piece dyed, under paragraph 399, tariff act of 1909, was held dutiable as silk veilings (par. 402).

Before Board 3, July 9, 1914.

No. 86095.—Sculptures—Fountain of Marble and Metal.—Protests 700690, etc., of Louis A. Consmiller (New York). Opinion by Waite, G. A.

A fountain consisting of a pedestal and basin of marble, from the center of which rises a group of metal figures, classified as manufactures of metal under paragraph 199, tariff act of 1909, was held dutiable as sculptures (par. 470), the evidence showing that the fountain was designed by an artist and executed under his immediate direction, he himself correcting and retouching both the plaster cast and the final metal cast, the latter having been finished and colored by him personally. Abstract 29420 (T. D. 32751) followed.

No. 86096.—American Goods Returned—Entireties.—Protests 652792, etc., of E. Denike (Laredo).

Hay, *General Appraiser:* These are protests against the assessment of duty as entireties upon certain locomotive drivers owned by the National Railways of Mexico under paragraph 171 of the tariff act of 1909. According to an agreed statement of facts the wheels were used by the National Railways of Mexico in this country for some time prior to the exportation to New Laredo, Mexico, to have the tires turned; that there was nothing done to the drivers in Mexico except the turning of the tires, which would enhance the value of the tire by the amount of the labor expended thereon, $67.50 United States currency. The protestants now claim a refund of duty as American goods returned under paragraph 500, or if dutiable at all they are dutiable only on the amount of $67.50, the amount of the labor expended thereon. This protest is different in no material respect from that which was the subject of this board's deci-

sion in E. Denike's case, Abstract 34555 (T. D. 34090). In our opinion, in that case we gave as our reason for not extending the principle of Hillhouse *v.* United States (152 Fed., 163; T. D. 27831) to paragraph 500 that it would be a radical departure from the rule of law long existent and that the decided cases had left the law on the subject in some doubt. The Denike case, *supra*, has since that time been reversed by the Court of Customs Appeals, Denike *v.* United States (5 Ct. Cust. Appls., —; T. D. 34553), and apparently the court has departed from the long-established rule and extended the rule in the Hillhouse case to paragraph 500. Following that decision, the protests are sustained and the collector is directed to reliquidate the entries, assessing duty in accordance with the law as laid down in Denike *v.* United States, *supra*.

No. 36097.—Joss Sticks.—Protest 710008 of Morimura Bros. (New York). Opinion by Hay, G. A.

On the authority of Abstract 35623 (T. D. 34459) joss sticks classified under paragraph 480, tariff act of 1909, were held entitled to free entry (par. 599).

No. 36098.—Validity of Reappraisement.—Protest 710666 of F. Lubrano (New York). Opinion by Hay, G. A.

Protest sustained claiming that a reappraisement of cotton or flax lace by board of three general appraisers was invalid for the reason that it was signed by one general appraiser who was not assigned to that board and did not sit at the hearing, and by only one general appraiser who participated at the hearing.

No. 36099.—Plate Powder.—Protest 716646 of Wm. Hodges & Co. (Philadelphia). Opinion by Hay, G. A.

Protest overruled as to plate powder classified under paragraph 95, tariff act of 1909, claimed dutiable as whiting (par. 54) by similitude, no evidence having been offered to prove the character of the merchandise.

No. 36100.—Earthenware and Metal Steins—Musical Instruments.—Protest 725500 of L. D. Bloch & Co. (New York). Opinion by Hay, G. A.

Earthenware steins, with musical instruments placed in the bottom thereof and having metal covers, classified as decorated earthenware under paragraph 93, tariff act of 1909, were held dutiable as manufactures of metal (par. 199).

No. 36101.—Clerical Error.—Protest 725844 of S. Langsdorf & Co. (New York). Opinion by Hay, G. A.

Protest overruled claiming clerical error.

No. 36102.—Moose Heads.—Protest 727501 of F. R. Wilson (Portland, Me.). Opinion by Hay, G. A.

Two moose heads classified under paragraph 385, tariff act of 1913, were held entitled to free entry as horns and parts thereof (par. 511). G. A. 5652 (T. D. 25231) and Abstract 7326 (T. D. 26594) followed.

No. 36103.—Regalia.—Protest 731342 of E. Determann (Indianapolis). Opinion by Hay, G. A.

The regulations not having been complied with, protest overruled as to candlesticks classified under paragraph 167, tariff act of 1913, and claimed entitled to free entry as regalia (par. 611).

No. 36104.—Protests Filed too Late.—Protest 726135 of H. B. Moore & Co. (Detroit). Opinion by Hay, G. A.

Protest filed too late; dismissed.

(T. D. 34630.)

Cigars, cheroots, and cigarettes.

Cigars, cheroots, and cigarettes brought in by passengers from the Philippine Islands.—Amendment to article 618, Customs Regulations of 1908.

TREASURY DEPARTMENT, *July 14, 1914.*

To collectors and other officers of the customs:

Customs officers are authorized to deliver free of duty and internal-revenue tax 50 cigars or cheroots or 300 cigarettes brought in by passengers arriving in the United States direct from the Philippine Islands, and to deliver all cigars, cheroots, or cigarettes manufactured in those islands in excess of the number given above and brought in by passengers arriving direct therefrom, if the same are in proper packages, each containing the number of cigars, cheroots, or cigarettes which the law provides shall be packed therein, and stamped with an internal-revenue stamp of the proper denomination, and the stamp canceled, but without regard to the minimum number (3,000) which may be regularly (imported) brought into this country in a single package.

Article 618 of the Customs Regulations of 1908 as amended by T. D. 32406 of April 18, 1912, is further amended accordingly.

(98420.) BYRON R. NEWTON, *Assistant Secretary.*

(T. D. 34631.)

Immediate-transportation port—Providence, R. I.

Providence, R. I., created an immediate-transportation port under act of 1880.

TREASURY DEPARTMENT, *July 14, 1914.*

To officers of the customs and others:

The appended act of Congress, approved July 1, 1914, is published for the information and guidance of all concerned.

(93001-43.) BYRON R. NEWTON, *Assistant Secretary.*

AN ACT Extending to the port of Providence, Rhode Island, the privileges of section one of the act approved June tenth, eighteen hundred and eighty, governing the immediate transportation of dutiable merchandise without appraisement.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the privileges of section one of the act approved June tenth, eighteen hundred and eighty, governing the immediate transportation of dutiable merchandise without appraisement, be, and the same are hereby, extended to the port of Providence, in the State of Rhode Island.

Approved, July 1, 1914.

(T. D. 34632.)

Drawback on dyed cotton piece goods.

Drawback on dyed cotton piece goods manufactured by the Du Pont Fabrikoid Co., of Wilmington, Del., with the use of imported dyes and cotton piece goods imported in the gray.

TREASURY DEPARTMENT, *July 14, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on dyed cotton piece goods manufactured by the Du Pont Fabrikoid Co., of Wilmington, Del., with the use of imported dyes and cotton piece goods in the gray.

A manufacturing record shall be kept, which will show, in addition to the usual import data, the number of square yards in each piece of imported cotton piece goods dyed for exportation with benefit of drawback, both before and after dyeing, and the quantity of imported dyes used in the manufacture of the same. A sworn abstract from such manufacturing record shall be filed with each drawback entry.

The allowance shall not exceed the quantities of imported materials used in the manufacture of the exported dyed cotton piece goods, as shown by the sworn abstract from the manufacturing record.

The sworn statement of the manufacturers, dated June 19, 1914, is transmitted herewith for filing in your office.

Respectfully, BYRON R. NEWTON,
(101733.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34633.)

Drawback on shoe cloth.

Drawback on shoe cloth manufactured for the account of the Julius Kallman Co., of Boston, Mass., by the Windram Manufacturing Co., of Boston, Mass., with the use of imported worsted cloth.

TREASURY DEPARTMENT, *July 14, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on shoe cloth manufactured for the account of the Julius Kallman Co., of Boston, Mass., by the Windram Manufacturing Co., of Boston, Mass., with the use of imported worsted cloth.

A manufacturing record shall be kept by the Windram Manufacturing Co., which will show the lot number and date of manufacture of each lot of shoe cloth manufactured for the account of the Julius Kallman Co., the length and width of each piece of imported worsted cloth used, and the number of yards and width of the shoe cloth produced. A sworn statement from such manufacturing record shall be filed with each drawback entry.

The allowance shall not exceed the quantity of imported worsted cloth used in the manufacture of the exported shoe cloth, as shown by the sworn statement from the manufacturing record.

The sworn statements of the Julius Kallman Co. and the Windram Manufacturing Co., dated June 25 and 29, 1914, respectively, are transmitted herewith for filing in your office.

Respectfully, BYRON R. NEWTON,
(102279.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 34634.)

Drawback on medicinal and toilet preparations and flavoring extracts.

Drawback on medicinal and toilet preparations and flavoring extracts manufactured by McKesson & Robbins, of New York, N. Y., either with the use of wholly imported alcohol or with the use of wholly domestic tax-paid alcohol.

TREASURY DEPARTMENT, *July 15, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on medicinal and toilet preparations and flavoring extracts manufactured by McKesson & Robbins of New York, N. Y., either with the use of wholly imported alcohol or with the use of wholly domestic tax-paid alcohol.

The allowance shall not exceed the quantity of imported or domestic tax-paid alcohol appearing in the exported preparations and extracts, as shown by the sworn statement and schedule of the manufacturers, dated June 11, 1914, which is transmitted herewith for filing in your office.

Supplemental sworn schedules covering other medicinal and toilet preparations and flavoring extracts may be filed, and upon verification thereof drawback may be allowed on the preparations and extracts specified in such schedule.

Respectfully, BYRON R. NEWTON,
(99411.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34635.)

Drawback on fabrikoid.

Drawback on artificial leather, designated as fabrikoid, manufactured by the Du Pont Fabrikoid Co., of Wilmington, Del., with the use of imported cotton piece goods and dyes and castor oil manufactured from imported castor seeds.

TREASURY DEPARTMENT, *July 15, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on artificial leather, designated as "No. 9000 quality fabrikoid," manufactured by the Du Pont Fabrikoid Co., of Wilmington, Del., with the use of imported cotton piece goods

(moleskin) and dyes and castor oil manufactured by the Baker Castor Oil Co. from imported castor seeds.

The allowance shall not exceed the quantities of imported materials and castor oil made from imported castor seeds used in the manufacture of the exported fabrikoid, as shown by the sworn statement of the manufacturer, dated June 11, 1914, which is transmitted herewith for filing in your office.

At the end of each calendar year there shall be filed in your office a sworn statement by the manufacturers, showing any changes in the quantities of imported materials and castor oil used in the manufacture of fabrikoid. Such sworn statement shall, in your discretion, be verified by the special agent at your port.

Respectfully, CHARLES S. HAMLIN
(101733.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34636.)

Drawback on flavoring extracts.

Drawback on flavoring extracts manufactured by John Matthews (Inc.), of New York, N. Y., with the use of domestic tax-paid alcohol.

TREASURY DEPARTMENT, *July 15, 1814.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on flavoring extracts manufactured by John Matthews (Inc.), of New York, N. Y., with the use of domestic tax-paid alcohol.

The allowance shall not exceed the quantity of domestic tax-paid alcohol appearing in the exported extracts, with an addition to compensate for loss in manufacture, as shown by the sworn schedule of the manufacturer, dated April 2, 1914, which is transmitted herewith for filing in your office.

Respectfully, CHARLES S. HAMLIN,
(61155.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34637.)

Drawback on chewing gum.

T. D. 32142 of January 11, 1912, amended to provide for liquidation of entries in accordance with the sworn statement of the manufacturer, dated June 6, 1914.

TREASURY DEPARTMENT, *July 15, 1914.*

SIR: The department's regulations of January 11, 1912 (T. D. 32142), providing for the payment of drawback on chewing gum manufactured by the Wm. Wrigley, jr., Co., of Chicago, Ill., with the use of imported sugar and gum chicle, are hereby amended to provide that the allowance shall not exceed the quantity of imported

materials used in the manufacture of the chewing gum, as shown by the sworn statement of the said company, dated June 6, 1914, which is transmitted herewith for filing in your office.

Respectfully, CHARLES S. HAMLIN,
(91581.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34638.)

Drawback on embossed and crystallized tin sheets.

Drawback on embossed and crystallized tin sheets manufactured by M. Gould's Sons & Co., of Newark, N. J., with the use of imported taggers tinplate.

TREASURY DEPARTMENT, *July 15, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on embossed tin sheets and crystallized tin sheets manufactured by M. Gould's Sons & Co., of Newark, N. J., with the use of imported taggers tinplate.

The allowance shall not exceed the quantity of imported taggers tinplate appearing in the embossed tin sheets and crystallized tin sheets exported, as shown by the sworn statement of the manufacturers, dated June 17, 1914, which is transmitted herewith for filing in your office.

Respectfully, CHARLES S. HAMLIN,
(102215.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34639.)

Drawback on hack-saw blades.

T. D. 33705 of August 21, 1913, amended to provide for an allowance to compensate for waste resulting from milling and punching the hack-saw blanks and for identification of the imported steel used in manufacturing periods of three or six months.

TREASURY DEPARTMENT, *July 15, 1914.*

SIR: The department's regulations of August 21, 1913 (T. D. 33705), providing for the payment of drawback on hack-saw blades manufactured from imported steel are hereby amended to provide for an allowance to compensate for waste in milling and punching the hack-saw blanks.

The sworn schedule of the manufacturer shall show the commercial designation (dimensions) of the saws of each size manufactured for exportation with benefit of drawback and the dimensions of the blanks used in the manufacture thereof. Original sworn schedules filed under these regulations shall be forwarded to the special agent for investigation and report. Supplemental sworn schedules shall be accompanied by a sworn sample of each size of hack-saw blade cov-

ered thereby and of the hack-saw blanks used in the manufacture thereof and such supplemental sworn schedules, with the samples, shall be forwarded to the special agent for verification in such manner as he may deem proper.

At the election of the manufacturer the imported steel used in the manufacture of exported hack-saw blades may be identified against the several import lots of steel used during a manufacturing period of three or six months, as the manufacturer shall prefer. In such case an abstract from the manufacturing record shall be filed with the collector of customs, which will show the usual import data covering the several lots of imported steel used during the period covered thereby, the value of such steel laid down at the factory, and the value of the waste during such period. In such case the drawback entries shall be liquidated on the basis of the lowest rate of duty paid on any of the steel used during the period in which the hack-saw blades covered thereby were produced.

The allowance shall not exceed the weight of the hack-saw blanks used in the manufacture of the exported hack-saw blades, such allowance to be reduced according to the quantity of imported sheet steel which the value of the waste, predicated on 7½ per cent of the weight of the hack-saw blanks used, will replace.

For the information and guidance of collectors of customs in the liquidation of entries under T. D. 33705, as amended hereby, there is published below a schedule showing the standard weight of sheet steel per square foot by gauge.

Standard weight of sheet steel per square foot.

Thickness.	Weight.	Thickness.	Weight.
Inches.	*Ounces.*	*Inches.*	*Ounces.*
0.022	14.3616	0.044	28.7232
.023	15.0144	.045	29.3760
.024	15.6672	.046	30.0288
.025	16.3200	.047	30.6816
.026	16.9728	.048	31.3344
.027	17.6256	.049	31.9872
.028	18.2784	.050	32.6400
.029	18.9312	.051	33.2928
.030	19.5840	.052	33.9456
.031	20.2368	.053	34.5984
.032	20.8896	.054	35.2512
.033	21.5424	.055	35.9040
.034	22.1952	.056	36.5568
.035	22.8480	.057	37.2096
.036	23.5008	.058	37.8624
.037	24.1536	.059	38.5152
.038	24.8064	.060	39.1680
.039	25.4592	.061	39.8208
.040	26.1120	.062	40.4736
.041	26.7648	.063	41.1264
.042	27.4176	.064	41.7792
.043	28.0704	.065	42.4320

Respectfully,
(5653.)
CHARLES S. HAMLIN,
Assistant Secretary.

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34640.)

Drawback on veils.

T. D. 33987 of December 17, 1913, extended to cover ladies' veils manufactured by the D. Strauss Co. (Inc.), of New York, N. Y., with the use of various imported materials.

TREASURY DEPARTMENT, *July 15, 1914.*

SIR: The department's regulations of December 17, 1913 (T. D. 33987), providing for the payment of drawback on ladies' veils manufactured by Martin Biavaschi, of New York, N. Y., from imported materials are hereby extended to cover veils in the piece and in the yard manufactured by the D. Strauss Co. (Inc.), of New York, N. Y., from imported veilings, nettings, chiffons, and mousseline de soie, marabout, and similar materials.

The sworn statement of the manufacturers, dated June 17, 1914, is transmitted herewith for filing in your office.

Respectfully, BYRON R. NEWTON,
(102249.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34641.)

Drawback on smoking tobacco.

T. D. 34498 of June 2, 1914, extended to cover smoking tobacco manufactured by J. S. Maloof & Co., of New York, N. Y., with the use of imported leaf tobaccos.

TREASURY DEPARTMENT, *July 15, 1914.*

SIR: The department's regulations of June 2, 1914 (T. D. 34498), providing for the payment of drawback on smoking tobacco manufactured by Beshara Ganim & Co., of New York, N. Y., from imported leaf tobacco are hereby extended to cover smoking tobacco manufactured by J. S. Maloof & Co., of New York, N. Y., with the use of similar imported leaf tobaccos.

The sworn statement of the manufacturers, dated May 16, 1914, is transmitted herewith for filing in your office.

Respectfully, CHARLES S. HAMLIN,
(102196.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34642.)

Importation of viruses, serums, etc.—List of licensed manufacturing establishments.

TREASURY DEPARTMENT, *July 15, 1914.*

To collectors and other officers of the customs:

The following table contains a list of the establishments holding, on June 30, 1914, licenses issued by the Treasury Department in

accordance with the act of Congress approved July 1, 1902, entitled "An act to regulate the sale of viruses, serums, toxins, and analogous products in the District of Columbia, to regulate interstate traffic in said articles, and for other purposes."

The number of the license of each firm is also given, together with the names of the several products for which licenses have been granted.

(51022.) CHARLES S. HAMLIN, *Assistant Secretary.*

No. of license.	Establishments.	Products.
1	Parke, Davis & Co., Detroit, Mich.....	Diphtheria antitoxin, antigonococcic serum, antimeningococcic serum, antistreptococcic serum, antitetanic serum, antitubercle serum, tuberculins, bacterial vaccines, erysipelas and prodigiosus toxins, antirabic virus, vaccine virus, normal horse serum, thyroidectomized horse serum, and modified bacterial derivatives (Schafer).
2	H. K. Mulford Co., Philadelphia, Pa...	Diphtheria antitoxin, antianthrax serum, antidysenteric serum, antimeningococcic serum, antipneumonic serum, antistreptococcic serum, antitetanic serum, tuberculins, vaccine virus, normal horse serum, bacterial vaccines, sensitized typhoid vaccine, sensitized streptococcic vaccine, sensitized staphylococcic vaccine, sensitized bacterial vaccines, and antirabic virus.
3	Dr. H. M. Alexander & Co., Marietta, Pa.	Diphtheria antitoxin, antitetanic serum, antirabic virus, vaccine virus, normal horse serum, antityphoid vaccine, and tuberculins.
5	Fluid Vaccine Co., Milwaukee, Wis....	Vaccine virus.
6	The Slee Laboratories, Swiftwater, Pa..	Diphtheria antitoxin, antimeningococcic serum, antistreptococcic serum, antitetanic serum, normal horse serum, and vaccine virus.
8	The Cutter Laboratory, Berkeley, Cal..	Diphtheria antitoxin, antistreptococcic serum, tuberculins, bacterial vaccines, and vaccine virus.
9	Frederick Stearns & Co., Detroit, Mich.	Diphtheria antitoxin, streptolytic serum, and pneumolytic serum.
11	Pasteur Institute of Paris, Paris, France.	Diphtheria antitoxin, antidysenteric serum, antimeningococcic serum, antiplague serum, antistreptococcic serum, sérum antivenimeux, antitetanic serum, and antiplague vaccine.
12	Chemische Fabrik auf Actien, Berlin, Germany.	Diphtheria antitoxin, tuberculin, antigonococcus vaccine, and antistreptococcic serum.
14	Health Department of the City of New York.	Diphtheria antitoxin, antitetanic serum, antirabic virus, vaccine virus, tuberculin, antimeningococcic serum, antipneumonococcic serum, normal horse serum, bacterial vaccines, and antistreptococcic serum.
16	National Vaccine and Antitoxin Institute, Washington, D. C.	Diphtheria antitoxin, vaccine virus, normal horse serum, and bacterial vaccines.
17	Lederle Antitoxin Laboratories, New York City.	Diphtheria antitoxin, antigonococcic serum, antimeningococcic serum, antipneumococcic serum, antistreptococcic serum, antitetanic serum, vaccine virus, antirabic virus, normal horse serum, antityphoid vaccine, and bacterial vaccines.
18	Burroughs, Wellcome & Co., London, England.	Diphtheria antitoxin, antigonococcic serum, antidysenteric serum, anticolon-bacillus serum, antistaphylococcic serum, antistreptococcic serum, antityphoid serum, antimeningococcic serum, normal horse serum, tuberculins, bacterial vaccines, and antitetanic serum.
19	Memorial Institute for Infectious Diseases, Chicago, Ill.	Diphtheria antitoxin.
21	Swiss Serum and Vaccine Institute, Berne, Switzerland.	Diphtheria antitoxin, antidysenteric serum, antimeningococcic serum, antipneumonic serum, antiplague serum, antistreptococcic serum, antitetanic serum, tuberculins, and bacterial vaccines.
22	Institut Bactériologique de Lyon, Lyon, France.	Antidiphtheric serum and normal goat serum.
23	Bacterio-Therapeutic Laboratory, Asheville, N. C.	Tuberculins.
24	Farbwerke, vormals Meister Lucius und Brüning, Hoechst on Main, Germany.	Diphtheria antitoxin, antidysenteric serum, antimeningococcic serum, antipneumonic serum, antistreptococcic serum, antitetanic serum, and tuberculins.
27	Institut Pasteur de Lille, Lille, France.	Sérum antivenimeux.
29	The Behringwerk, Marburg, Germany.	Antitetanic serum and tuberculin.
30	Dr. G. H. Sherman, Detroit, Mich.....	Bacterial vaccines.

No. of license.	Establishments.	Products.
31	E. Merck, Darmstadt, Germany.....	Diphtheria antitoxin, antimeningococcic serum, antipneumonic serum, antistreptococcic serum, normal horse serum (liquid and dried), jequiritol serum, tuberculins, bacterial vaccines, and leucofermantin (antitryptic sheep serum).
32	Kalle & Co., Biebrich, Germany.....	Tuberculin (Rosenbach).
35	Dr. Carl Spengler, Davos-Platz, Switzerland.	I. K. immune blood.
36	Dr. C. L. McDonald, Cleveland, Ohio..	Bacterial vaccines.
38	Laboratorio di Terapia Sperimentale (Bruschettini), Genoa, Italy.	Tuberculosis serum-vaccine and tuberculosis vaccine.
39	Pharmaceutisches Institut Ludwig Wilhelm Gans, Oberursel, near Frankfort on the Ma n, Germany.	Antidysenteric serum.
40	Hygienic Laboratory of the California State Board of Health, Sacramento, Cal.	Antirabic virus.
41	Arkansas Pasteur Institute and Hygienic Laboratory, Little Rock, Ark.	Do.
43	The Abbott Laboratories, Chicago, Ill..	Bacterial vaccines.
45	The Beebe Biological Laboratories, St. Paul, Minn.	Do.
46	New York Pasteur Institute, New York City.	Antirabic virus.
47	Georgia State Board of Health, Atlanta, Ga.	Do.
48	Inoculation Department of St. Mary's Hospital, London, England.	Bacterial vaccines and pollicine.
49	Dr. W. T. McDougall, Kansas City, Kans.	Antirabic virus.
50	St. Louis Pasteur Institute, St. Louis, Mo.	Do.
51	Upjohn Co., Kalamazoo, Mich.....	Tuberculins and bacterial vaccines.
52	E. R. Squibb & Sons' Research and Biological Laboratories, New Brunswick, N. J.	Diphtheria antitoxin, antigonococcic serum, antimeningococcic serum, antistreptococcic serum, antitetanic serum, normal horse serum, antirabic virus, bacterial vaccines, and leucocyte extract.
53	Laboratory of Clinical Pathology, Kansas City, Mo.	Antirabic virus.
54	Dr. James McI. Phillips, Columbus, Ohio.	Do.
55	Chemische Fabrik Güstrow, Güstrow i. M., Germany.	Staphylococcus vaccine.

(T. D. 34643.)

Drawback on siphon bottles and parts.

Drawback on siphon bottles, etched or sandblasted bottles, and capped siphon tubes manufactured by the Koscherak Siphon Bottle Works, of Hoboken, N. J., with the use of imported glass bottles and tubes.

TREASURY DEPARTMENT, *July 15, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on siphon bottles, etched or sandblasted bottles, and capped siphon tubes, manufactured by the Koscherak Siphon Bottle Works, of Hoboken, N. J., with the use of imported glass bottles and tubing.

The allowance shall not exceed the number of imported parts used in the manufacture of the exported articles, as shown by the sworn statement of the manufacturers, dated June 6, 1914, which is transmitted herewith for filing in your office.

Respectfully, CHARLES S. HAMLIN,
(102120.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34644.)

Drawback on saws.

Drawback on saws manufactured by E. C. Atkins & Co., of Indianapolis, Ind., with the use of imported steel.—T. D. 31820 of August 16, 1911, revoked.

TREASURY DEPARTMENT, *July 15, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on narrow band silver-steel saws, wide band saws, and circular saws manufactured by E. C. Atkins & Co., of Indianapolis, Ind., with the use of imported steel.

A manufacturing record shall be kept, which will show, in addition to the usual import data, the lot number and date of manufacture of each lot of saws manufactured for exportation with benefit of drawback, the dimensions, weight, and value of the imported steel used in the manufacture thereof, the dimensions, weight, and character of the saws produced, the quantity of worthless and the quantity of valuable waste, and the value of the valuable waste. A sworn abstract from such manufacturing record shall be filed with each drawback entry.

The allowance shall not exceed the quantity of imported steel used in the manufacture of the exported saws, as shown by the sworn abstract from the manufacturing record, the allowance to be reduced according to the quantity of imported steel which the value of the waste will replace.

The sworn statements of the manufacturers, dated May 15 and June 24, 1914, are transmitted herewith for filing in your office.

T. D. 31820 of August 16, 1911, is hereby revoked.

Respectfully, CHARLES S. HAMLIN,
(34825.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Louisville, Ky.*

(T. D. 34645.)

China sheep's wool.

Appeal directed from decision of the Board of United States General Appraisers of June 10, 1914, Abstract 35843 (T. D. 34548), involving the classification of merchandise returned by the appraiser as China sheep's wool.

TREASURY DEPARTMENT, *July 15, 1914.*

SIR: I have to acknowledge the receipt of your letter of the 7th instant, inviting attention to the decision of the Board of United States General Appraisers of the 10th ultimo, Abstract 35843 (T. D. 34548), involving the classification of merchandise returned by the appraiser as China sheep's wool of the third class under paragraph 370 of the tariff act of 1909.

In view of the importance of the issue, and in accordance with your recommendation, you are hereby authorized to file an application, in the name of the Secretary of the Treasury, with the United States Court of Customs Appeals for a review of the board's decision, in accordance with the provisions of subsection 29 of section 28 of the act of August 5, 1909.

Respectfully, CHARLES S. HAMLIN,
(97557.) *Assistant Secretary.*
ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 34646.)

Samples of seeds for the Department of Agriculture.

TREASURY DEPARTMENT, *July 16, 1914.*

To collectors and other officers of the customs:

At the request of the Secretary of Agriculture, it is directed that during the fiscal year ending June 30, 1915, 2-ounce samples of all importations of 100 pounds or more of grass, clover, and forage-plant seeds, and of screenings of wheat, oats, and barley, when such screenings are imported from Canada, be prepared at the earliest practicable date after entry and forwarded to the seed laboratory, Department of Agriculture, Washington, D. C., labeled with the names and addresses of consignors and consignees, name of seed or kind of screenings as given in the invoice, and quantity of the consignment.

(92655-21.) WM. P. MALBURN, *Assistant Secretary.*

(T. D. 34647.)

Brass neck chains, gun-metal hatpins, etc.

Appeal directed from decision of the Board of United States General Appraisers of April 17, 1914, Abstract 35405 (T. D. 34416), involving the classification of brass neck chains and hatpins composed of gun metal.

TREASURY DEPARTMENT, *July 16, 1914.*

SIR: I have to acknowledge the receipt of your letter of the 3d instant, inviting attention to so much of the board's decision of April 17, 1914, Abstract 35405 (T. D. 34416), as relates to certain brass neck chains with fancy links or with plain links set with imitation pearls, and hatpins with plain imitation pearl heads, and also hatpins composed of gun metal without settings, which articles were assessed with duty at the equivalent rate of 85 per cent ad valorem under paragraph 448 of the tariff act of August 5, 1909, and were held by the

board to be properly dutiable as jewelry at the rate of 60 per cent ad valorem under the same paragraph.

Inasmuch as you state that the petition you filed for a rehearing in this case was denied by the board on the 23d ultimo, you are hereby authorized, in view of the importance of the issue, to file an application, in the name of the Secretary of the Treasury, with the United States Court of Customs Appeals for a review of the board's decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, WM. P. MALBURN,
(71184.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 34648.)

Drawback on hydrogen peroxide.

Drawback on hydrogen peroxide manufactured by the Mallinckrodt Chemical Works, of St. Louis, Mo., with the use of imported barium dioxide.

TREASURY DEPARTMENT, *July 17, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on hydrogen peroxide manufactured by the Mallinckrodt Chemical Works, of St. Louis, Mo., at their St. Louis and Jersey City plants, with the use of imported barium dioxide.

A manufacturing record shall be kept, which will show, in addition to the usual data, the lot number and date of manufacture of each lot of hydrogen peroxide manufactured for exportation with benefit of drawback, the quantity of imported barium dioxide used, and the quantity of hydrogen peroxide obtained. Should the residue or waste resulting in the manufacture of hydrogen peroxide in future become valuable, the manufacturing record shall also show the value of such residue or waste and the value of the imported barium dioxide used. A sworn abstract from such manufacturing record shall be filed with each drawback entry.

The allowance shall not exceed the quantity of imported barium dioxide used in the manufacture of the exported hydrogen peroxide, as shown by the abstract from the manufacturing record, the allowance to be reduced according to the quantity of barium dioxide which the value of the waste, if any, will replace.

Respectfully, WM. P. MALBURN,
(99458.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *St. Louis, Mo.*

(T. D. 34649.)

Rules of procedure and practice.

Amendment of rule 33 of the "Rules of procedure and practice" before the Board of United States General Appraisers.

TREASURY DEPARTMENT, *July 20, 1914.*

To collectors of customs:

Referring to T. D. 34210, embodying the rules of procedure and practice before the Board of United States General Appraisers, there is hereby promulgated for your information the following addition to rule 33, which was unanimously adopted at a meeting of the board on the 22d ultimo:

In either case service must be at least five days before the return day of the motion, unless a general appraiser orders that a shorter service be sufficient.

(102603.) W. G. MCADOO, *Secretary.*

(T. D. 34650—G. A. 7586.)

American goods returned.

COMPLIANCE WITH REGULATIONS—"FILED WITH ENTRY."

It is not necessary under articles 570 and 571, Customs Regulations of 1908, that the oath or declaration of the owner, importer, consignee, or agent should be filed at the very instant of time that the first entry paper is filed, but it is a substantial compliance with that article if said oath is filed with the collector within a reasonable time thereafter and before the entry is liquidated or any action is taken thereon by the collector.

United States General Appraisers, New York, July 13, 1914.

In the matter of protest 700662 of T. W. Saunders against the assessment of duty by the collector of customs at the port of Buffalo.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers; SOMERVILLE, G. A., not participating).

HAY, *General Appraiser:* This protest is against the assessment of duty on certain pieces of tinplate, the protestant contending that they are free of duty under paragraph 500, tariff act of 1909, as American goods returned. The record is rather an unsatisfactory one, and from the fact that it is not contended anywhere by counsel for the Government, either at the trial or in his brief, that the merchandise is not entitled to free entry as American goods returned, provided the technical requirements of the law have been complied with, we determine the case upon the assumption that there is no other question involved therein. It is urged by counsel for the

Government that the regulations under which this paragraph of the law is made operative and under which proof of the American origin of the merchandise must be made, have not been complied with. That part of paragraph 500, which it is necessary to quote in the decision of this case, reads:

Par. 500. * * * Which shall have been actually exported from the United States; but proof of the identity of such articles shall be made, under general regulations to be prescribed by the Secretary of the Treasury * * *.

The regulations provided for are articles 570 and 571 of the Customs Regulations of 1908. From the record in the case, including a stipulation entered into by and between the counsel for the importer and the Assistant Attorney General, we find that the original entry paper was filed with the collector at Buffalo on the 21st day of April, 1913, and at that time the declaration made by the foreign exporter of the merchandise as provided for in article 570 was duly filed; that the collector at that time took a bond for the filing of the oath or declaration of the owner, importer, consignee, or agent as required under article 570 of the regulations, and this oath was filed with the collector a few days thereafter. The liquidation took place on the 25th of April, and from the fact that the collector originally liquidated the entry free and that he took a bond for the production of the oath or declaration of the owner, which was sworn to on April 19, and is now a part of the record in this case, we think it is not only a reasonable assumption but a fact to be almost conclusively drawn that the collector had at the time of the liquidation of the entry the oath in question. It is tacitly admitted, we think, by the Assistant Attorney General in his stipulation that this oath or declaration was filed by the following language:

Said oath or declaration of owner, consignee, or agent was filed with the Buffalo collector several days subsequent to the day that the entry was made.

It is contended by the Assistant Attorney General that the collector was without authority to take the bond and that the regulations requiring that the oath or affidavit of the importer, etc., should be filed with the entry have not been complied with; that the filing of the same a few days subsequent was not such a compliance, and hence the importer is not entitled to the benefits of the statute for American goods returned. It is difficult to say why the collector took the bond for filing this oath. The owner, consignee, or agent, whoever he was, that presented the bond to the collector must have been capable of making the oath or affidavit. This oath or declaration is at best but a technical requirement of law for the purpose of safeguarding the revenues. We do not think that the regulations should be so strictly construed as to require that this oath should be filed at the

instant of time that the first paper is filed. If the regulations are not substantially complied with by the filing of this paper with the collector a few days after filing the entry paper and before any action was taken thereon by the collector, then they could not be complied with unless the two were filed simultaneously. If a delay of a few days is fatal when no action was taken by the collector and when no harm could come therefrom, then a delay of a few hours must be fatal, and it would finally come to a delay of a few minutes or a few seconds or fractions thereof. If it is filed prior to the taking of any action by the collector on the entry paper, and within a reasonable time after the filing thereof, we think it is a substantial compliance with article 570. In the case at bar no harm could possibly come to the Government from the delay in filing this oath. Any other conclusion, it seems to us, would deprive the citizen of his property, which the law does not require him to surrender for public use, upon a technicality so narrow that the administration of the customs laws would be brought into disfavor. We think, therefore, in this instance that there was a substantial compliance with the law and with the regulations, and as the Assistant Attorney General apparently waives any other question in connection with the case and no attempt is made to show that the merchandise in question was not American goods being returned, the case being rested entirely upon the technical contention above discussed, the protest is hereby sustained and the collector directed to reliquidate the entry admitting the merchandise free of duty.

(T. D. 34651—G. A. 7587.)

Plated antimony ware.

Antimony ware, coated with a thin film of silver or gold as a result of having been immersed or dipped in a solution of silver or gold, is properly dutiable under the provision in paragraph 167, tariff act of 1913, for "articles or wares plated with gold or silver," irrespective of the method employed to produce such plated effect.

United States General Appraisers, New York, July 13, 1914.

In the matter of protests 730676, etc., of A. L. Tuska *et al.* against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers; COOPER, G. A., not participating).

FISCHER, *General Appraiser:* Certain articles made of antimony, claimed by the Government to be plated with gold or silver and assessed with duty accordingly at 50 per cent ad valorem under the first half of paragraph 167, tariff act of 1913, are contended by importers to be properly dutiable at 20 per cent ad valorem under the

second half of said paragraph as articles composed of metal "not plated with gold or silver." Said paragraph reads as follows:

Par. 167. Articles or wares not specially provided for in this section; if composed wholly or in part of platinum, gold, or silver, and articles or wares plated with gold or silver, and whether partly or wholly manufactured, 50 per centum ad valorem; if composed wholly or in chief value of iron, steel, lead, copper, brass, nickel, pewter, zinc, aluminum, or other metal, but not plated with gold or silver, and whether partly or wholly manufactured, 20 per centum ad valorem.

At the hearing of the issue thus raised the importers endeavored to prove that said merchandise was not plated nor so recognized in trade and commerce, and that the finished silver or gold-plated effect found upon the imported articles was merely the result of what is known as a "washing" or "dipping" process; and that the only possible method by which plating, as commercially understood, could be produced is by a process known as "electrolysis."

Briefly stated, the proof submitted clearly establishes these undisputed facts: (1) The basic material of which said merchandise is composed is antimony; (2) when formed, said articles are first electroplated with copper; (3) they are then immersed in a solution consisting of cyanide of potassium, water, and pure silver, which latter adheres to the copper-plated surface of the articles, causing the same to become coated with a thin film of pure silver; (4) where gold is present on the surface, the article has been treated in a similar solution containing gold instead of silver.

Plating is produced by superimposing on one metal the solution of another metal. It is the depositing of this metallic solution which constitutes the plating rather than the method employed to produce that result. Certainly for purposes of dutiable classification it is wholly immaterial whether such plating is accomplished by the process of electrolysis or by the so-called "washing" or "dipping" treatment. The result alone is important, and we are not concerned as to how that result is attained.

We are therefore of opinion that the controverted articles have been plated within the common and ordinary understanding of that term, and this view we believe is amply supported by the following dictionary definitions:

Plate.—To overlay or coat with silver, gold, or other metal; specifically, to attach a permanent covering or film of one metal to (the surface of another) * * *. Chemical plating or dipping, a process performed in some cases by the mere immersion of one metal in a hot or cold solution of some salt of another metal.—*Century.*

Plating.—The act or operation of covering articles with a thin coating or film of metal * * *. It is effected in various ways: sometimes the plating metal is attached to and rolled out with the other metal by pressure; sometimes the one metal is precipitated from its solution upon the other, electrochemical decomposition being now much employed for this purpose. (2) A coating of one metal on another.—*Century.*

Plating.—The act or process of covering a surface as with a plate, by dipping, electrodeposition, etc.; or the coating so applied.—*Standard.*

It is therefore clearly obvious that the imported articles fall squarely within these definitions as plated articles, and that they are properly dutiable accordingly.

Even though it were conclusively proven that the term "plated ware" had a well defined and understood trade meaning, the fact nevertheless remains that all of the provisions of said paragraph are descriptive and in no way denominative, and that any attempt to prove commercial designation with respect thereto must fail. As a matter of fact, we can scarcely conceive that the trade would ever adopt any such vague and indefinite term as "articles or wares plated."

In Sidenberg *v.* Robertson (41 Fed., 763) it was held that where a particular word the trade meaning of which is sought to be proved does not appear in the tariff act and that statute contains only general words, the party seeking to prove commercial designation under such particular trade term must not merely show that said articles were bought and sold thereunder, but that the disputed merchandise was not commercially embraced within the meaning of the general words embodied in the tariff act. This ruling has been followed in Loewenthal *v.* United States (2 Ct. Cust. Appls., 43; T. D. 31592); Acker *v.* United States (1 Ct. Cust. Appls., 328, 333; T. D. 31431); Austin *v.* United States (4 Ct. Cust. Appls., 261; T. D. 33483); Stiner *v.* United States (2 Ct. Cust. Appls., 347; T. D. 32079).

That a descriptive provision for an article is not susceptible of proof as to commercial designation has been held to be the law in cases too numerous to mention. A few instances, however, may be here cited: Barber *v.* Schell (107 U. S., 617); Cadwalader *v.* Zeh (151 U. S., 171); Patton *v.* United States (159 U. S., 500, 510); Habicht *v.* United States (2 Ct. Cust. Appls., 457; T. D. 32206).

There is, however, another phase of the issue arising out of the established state of facts here present. It will be noted that said paragraph 167 provides for "articles * * * if composed * * * *in part of* * * * *gold or silver*, * * * 50 per centum ad valorem." This provision is separate and distinct from the one levying the same rate of duty on "articles or wares plated with gold or silver," under which the articles here in question were assessed. The thin film of silver or gold, as the case may be, found upon the articles as imported certainly constitutes a part of such articles, irrespective of whether its presence is due to a coating or a plating process. Therefore, even though it were satisfactorily established that said articles were not plated, they would nevertheless be properly dutiable at 50 per cent ad valorem under said paragraph as "articles * * * composed * * * in part of * * * gold or silver."

For the reasons hereinabove mentioned we overrule the protests and affirm the decisions of the collector.

(T. D. 34652.)

Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, Somerville, and Hay.

BEFORE BOARD 1, JULY 13, 1914.

No. 36105.—NECKLACE CLASPS—JEWELRY.—Protest 360075 of American Bead Co. (New York). Opinion by Sullivan, G. A.

On the authority of Abstract 35807 (T. D. 34548) gilt metal and glass bead clasps for necklaces were held properly classified as parts of jewelry under paragraph 434, tariff act of 1897.

No. 36106.—JEWELRY.—Protests 563547, etc., and 625574 of Davies, Turner & Co. et al. (New York). Opinions by Sullivan, G. A.

United States *v.* Cohn (3 Ct. Cust. Appls., 273; T. D. 32571), United States *v.* Guthman (3 Ct. Cust. Appls., 276; T. D. 32572), United States *v.* Goldberg's Sons (3 Ct. Cust. Appls., 282; T. D. 32573), Guthman *v.* United States (3 Ct. Cust. Appls., 286; T. D. 32574), Cohn *v.* United States (3 Ct. Cust. Appls., 288; T. D. 32575), and Cohn *v.* United States (4 Ct. Cust. Appls., 378; T. D. 33536) followed as to articles commonly known as jewelry, held dutiable accordingly under paragraph 448, tariff act of 1909.

No. 36107.—TENNIS BALLS.—Protest 717212 of Meier & Frank Co. (Seattle).

Tennis balls classified as manufactures in part of wool, found to be in chief value of rubber, were held dutiable under paragraph 463, tariff act of 1909.

BROWN, *General Appraiser:* * * * A manufacture of which rubber is the component material of chief value is more specifically provided for under paragraph 463 than under paragraph 378, which covers manufactures in part of wool. The words "not specially provided for" occur in both paragraphs. The principle of Hartranft *v.* Meyer (135 U. S., 237) is controlling here, where it was expressly held, in construing two similar provisions of the tariff law, both containing the words "not specially provided for," that the provision covering the material of chief value was the more specific.

No. 36108.—KAMABOKO—FISH BREAD.—Protest 730943 of Iwakami & Co. (San Francisco). Opinion by Brown, G. A.

Protest overruled as to Kamaboko classified as fish in tins under paragraph 270, tariff act of 1909, and claimed dutiable as a nonenumerated manufactured article (par. 480) or as bread (par. 244). Abstract 35295 (T. D. 34355) followed. Abstract 35469 (T. D. 34425) and Abstract 35682 (T. D. 34468) cited.

No. 36109.—FISH IN TINS—SPRATS AND ANCHOVIES IN HALF BARRELS.—Protest 600326 of F. B. Vandegrift & Co. (Boston), protests 559226, etc., of Meyer & Lange, protest 699388 of A. H. Ringk & Co., and protests 641728, etc., of Standard Grocery Co. et al. (New York), protests 608908, etc., of O. G. Hempstead & Son (Philadelphia), protests 621299, etc., of Park-Fisher Co., and protests 694417, etc., of Schwabacher Bros. & Co. (Port Townsend), and protest 720321 of Giurlani & Bro. (San Francisco). Opinions by Brown, G. A.

United States *v.* Smith (4 Ct. Cust. Appls., 70; T. D. 33312), United States *v.* Miller (5 Ct. Cust. Appls., —; T. D. 34443), Ahlbrecht *v.* United States (2 Ct. Cust.

Appls., 471; T. D. 32226), and United States *v.* Rosenstein (1 Ct. Cust. Appls., 304; T. D. 31357) followed as to fish in tins and sprats and anchovies in half barrels.

No. 36110.—PROTESTS OVERRULED.—Protest 743594 of A. Giurlani & Bro. (San Francisco). Opinion by Brown, G. A.

Protest unsupported; overruled.

BEFORE BOARD 2, JULY 13, 1914.

No. 36111.—BRONZE WIRE ARTICLES.—Protests 733449, etc., of Neumeyer & Dimond et al. (New York). Opinion by Fischer, G. A.

United States *v.* McCoy (4 Ct. Cust. Appls., 396; T. D. 33838) followed as to bronze wire articles held not subject to duty under paragraph 135, tariff act of 1909.

No. 36112.—PAPER NOT SPECIALLY PROVIDED FOR.—Protests 722513, etc., of Osaki Shoten et al. (Honolulu). Opinion by Fischer, G. A.

Protests overruled as to paper classified as not specially provided for under paragraph 410, tariff act of 1909.

No. 36113.—METAL SCREW COVERS FOR JARS.—Protests 705920, etc., of F. B. Vandegrift & Co. (New York). Opinion by Fischer, G. A.

On the authority of G. A. 7555 (T. D. 34376) metal screw covers for jars, classified under paragraph 196, tariff act of 1909, were held dutiable as manufactures of metal (par. 199), as claimed.

No. 36114.—POSTAL CARDS.—Protest 537747 of Dingelstedt & Co. (New York). Opinion by Fischer, G. A.

Embossed and sprayed post cards classified under paragraph 415, tariff act of 1909, were held dutiable under paragraph 416, as claimed.

No. 36115.—PROTESTS OVERRULED.—Protests 730112, etc., of Watson Bros. (Boston), and protests 726722–45470, etc., of G. W. Sheldon & Co. et al. (Chicago). Opinions by Fischer, G. A.

Protests unsupported; overruled.

No. 36116.—SILK SCARFS—WEARING APPAREL.—Protest 707861 of K. Takayama (New York). Opinion by Howell, G. A.

Merchandise invoiced as silk hatbands, classified as silk scarfs suitable for use as wearing apparel and sometimes used as trimmings for women's hats under paragraph 402, tariff act of 1909, were claimed dutiable as hatbands (par. 401) or manufactures of silk (par. 403). Protest overruled.

No. 36117.—COTTON ORNAMENTS—CROCHET BALLS—COMMERCIAL DESIGNATION.—Protest 702313–44428 of Kunstadter Bros. (Chicago). Opinion by Howell, G. A.

Crochet balls made of cotton cord, having a loop projecting from the side, classified as cotton ornaments under paragraph 349, tariff act of 1909, were claimed dutiable as buttons (par. 427). Protest overruled. United States *v.* Oberle (1 Ct. Cust. Appls., 527; T. D. 31545) cited as to evidence insufficient to prove commercial designation.

No. 36118.—PROTESTS OVERRULED.—Protests 358373–28963, etc., of Edson, Keith & Co. (Chicago). Opinion by Howell, G. A.

Protests unsupported; overruled.

BEFORE BOARD 3, JULY 13, 1914.

No. 36119.—ANTIQUE BUREAU.—Protest 727012 of Shreve, Crump & Low Co. (Boston). Opinion by Waite, G. A.

A Chippendale writing desk or bureau of mahogany was held entitled to free entry under paragraph 717, tariff act of 1909, as an artistic antiquity, as claimed.

No. 36120.—DURESS.—Protests 653163, etc., of Hawley & Letzerich et al. (Galveston and New Orleans), and protests 707516, etc., of H. G. McFaddin & Co. (New York). Opinions by Waite, G. A.

Protests overruled claiming duress, the board holding that the fact that in a reappraisement proceeding on merchandise of the same character as that here involved the entered value agreed with the invoice value in these cases, and that the entered value was sustained in said reappraisement proceeding, does not avail the importers in this case in supporting their claim of duress. Van Ingen *v.* United States (4 Ct. Cust. Appls., 320; T. D. 33520) followed.

No. 36121.—CHARGES—CARTAGE.—Protests 715175, etc., of Sobrinos de Izquierdo & Co. et al. (San Juan.)

HAY, *General Appraiser:* These protests are filed against the action of the collector at San Juan, P. R., in assessing the expenses of cartage of certain imported merchandise from the public warehouse to a near-by public store. The case is submitted and argued in both the brief of the attorney for the importers and that of the Assistant Attorney General upon the letter of the collector. From this, we take it, this letter contains the facts upon which the case must of necessity be decided. Omitting the preliminaries the letter reads as follows:

The onions and potatoes on which this cartage was charged were imported in the Spanish S. S. *Balmes*, arrived June 27, 1913, from the Canary Islands. Owing to the quarantine against the Grand Canaries all cargo that might harbor rats is required to be fumigated. No accommodations are provided at this port for that purpose and this office has therefore placed at the disposition of the quarantine service certain rooms in the public warehouse where cargo of this nature is placed for fumigation. Owing to the limited quarters available for this purpose, it is necessary to remove the fumigated goods immediately in order to make room for more goods to be fumigated. The cartage in question was incurred in removing this cargo from the public store where it was fumigated to a near-by public store where the goods were held pending final delivery.

This case we think is controlled by the decisions of this Board in Acker, Merrall & Condit Co.'s case, G. A. 5689 (T. D. 25331); Fearon, Daniel & Co., G. A. 6373 (T. D. 27381) and Keveney & Co.'s case, G. A. 2825 (T. D. 15476). In Acker, Merrall & Condit Co.'s case, *supra*, certain wine was detained for examination under certain provisions of the pure food law, contained in one of the regular appropriation bills, requiring the examination of such merchandise as that which was the subject of the protest. The charge complained of was for storage of the wine pending examination. In that case we held the law to be as follows:

We know of no general provision of the law which would authorize the imposition of the expense of this charge upon the importer and the specific provision quoted above, under which this examination is made, being, as it is, one of several items for which there is a specific appropriation, would leave at least a reasonable inference that the purpose and intention of Congress was that all expense in connection with the examination therein provided for should be borne by the Government. But whether this be true or not we can not see that it in any way differs from the ordinary administration of a public law the expense of which is uniformly borne by the Government, unless there is express provision for imposing this expense upon some party in interest.

This case was appealed to the Circuit Court for the Southern District of New York and affirmed. (See United States *v.* Acker, 133 Fed., 842; T. D. 25812.)

In Fearon, Daniel & Co.'s case, *supra*, and Keveney's case, *supra*, it was held that certain fees were properly charged where goods were detained for examination by the Department of Agriculture and permitted to remain in public stores after due notice had been received by the importer.

From the collector's letter in the case at bar it is quite apparent that no notice to remove the merchandise had ever been given to the importer. It is true, as stated by Government counsel in his brief, that in one or two of the letters accompanying these protests the collector says that "the importers had the privilege of carting the merchandise themselves had they so desired and made application to this office." Both from this language and from the language of the collector's letter above quoted, to wit, "it is necessary to remove the fumigated goods immediately," we think it quite clear that no notice was given by the collector. Following the cases above cited the protests are sustained and the collector directed to reliquidate the entries accordingly.

No. 36122.—PUMICE STONE.—Protests 707096, etc., of J. H. Rhodes & Co. (New York). Opinion by Hay, G. A.

Protests overruled as to pumice stone classified as partially manufactured under paragraph 89, tariff act of 1909. Gallagher *v.* United States (5 Ct. Cust. Appls., —; T. D. 34095) cited.

No. 36123.—PROTESTS OVERRULED.—Protests 710756, etc., of Baltimore & Ohio Railroad Co. et al. (Baltimore, etc.), protests 558220, etc., of Standard Knitting Co. et al. (Cleveland, etc.), and protests 635381, etc., of W. Schade & Co. et al. (St. Louis, etc.). Opinions by Hay, G. A.

Protests unsupported; overruled.

BEFORE BOARD 2, JULY 16, 1914.

No. 36124.—WIRE STAPLES.—Protests 731339, etc., of B. F. Goodrich Co. (Cleveland). Opinion by Fischer, G. A.

Staples made of wire, classified under paragraph 114, tariff act of 1913, were held free of duty under paragraph 554, as claimed.

No. 36125.—CALENDARS LITHOGRAPHICALLY PRINTED.—Protest 732326 of Cunard Steamship Co. (Boston). Opinion by Fischer, G. A.

Lithographically printed calendars were held properly classified under paragraph 325, tariff act of 1913, rather than free of duty as "publications of individuals for gratuitous private circulation, not advertising matter" (par. 425).

No. 36126.—NIGHT LIGHTS.—Protest 740027 of B. Illfelder & Co. (New York). Opinion by Fischer, G. A.

Night lights in chief value of wood, classified under paragraph 199, tariff act of 1909, were held dutiable under paragraph 215, as claimed.

No. 36127.—ROOFING FELT.—Protests 730940, etc., of Balfour, Guthrie & Co. et al. (San Francisco). Opinion by Fischer, G. A.

Protests overruled as to roofing felt classified under paragraph 407, tariff act of 1909.

No. 36128.—MASKS FOR CHILDREN—SURFACE-COATED PAPER MASKS.—Protest 721864 of F. F. G. Harper & Co. (Los Angeles). Opinion by Fischer, G. A.

Children's masks composed of surface-coated paper, printed, assessed under paragraph 411, tariff act of 1909, were claimed dutiable as manufactures of paper (par. 420). Protest overruled.

No. 86129.—Sheet Music.—Protest 726726–45440 of G. W. Sheldon & Co. (Chicago). Opinion by Fischer, G. A.

Following G. A. 1266 (T. D. 12582) and G. A. 1991 (T. D. 13797) music in sheets was held properly classified under paragraph 416, tariff act of 1909.

No. 86130.—Surface-Coated Paper.—Protests 726767, etc., of F. W. Lutz & Co. (Richmond). Opinion by Fischer, G. A.

Merchandise returned by the appraiser as "paper, surface-coated, blue, suitable for covering boxes," and assessed at 40 per cent ad valorem under paragraph 324, tariff act of 1913, was claimed dutiable as "paper with coated surface or surfaces not specially provided for," under the same paragraph. Protests overruled.

No. 86131.—Needlecases.—Protest 635910–42020 of Marshall Field & Co. (Chicago). Opinion by Fischer, G. A.

Following G. A. 7367 (T. D. 32528) needlecases were held dutiable as unenumerated manufactured articles under paragraph 480, tariff act of 1909, as claimed.

No. 86132.—Tube-Welding Machine.—Protest 710324 of Davis-Bournonville Co. (New York). Opinion by Fischer, G. A.

Following G. A. 7559 (T. D. 34413) a tube-welding machine was held dutiable as a manufacture of metal under paragraph 199, tariff act of 1909, as classified, rather than as a machine tool (par. 197).

No. 86133.—Wire Articles.—Protests 715287, etc., of Knauth, Nachod & Kuhne (New York). Opinion by Fischer, G. A.

Following United States *v.* McCoy (4 Ct. Cust. Appls., 396; T. D. 33838) certain wire articles were held dutiable under paragraph 199, tariff act of 1909. Protests sustained.

No. 86134.—Appliquéd Silks—Value of Fabric.—Protest 702315–44300 of Marshall Field & Co. (Chicago).

Howell, *General Appraiser:* The goods in question consist of all-silk woven fabrics, piece dyed and appliquéd. Duty was assessed thereon by the collector under the provisions of paragraph 399, tariff act of 1909, in accordance with the rule laid down by the Court of Customs Appeals in United States *v.* Ewing & Clancey (3 Ct. Cust. Appls., 333; T. D. 32624). It appears from the special report of the appraiser that in applying the rule laid down in that case the value of the foundation fabric, with the appliqué removed, of the goods represented by item No. 5066 was determined by the appraiser at 97 centimes per meter, and that the value of the foundation fabric, with the appliqué removed, of the goods represented by item No. 5067 was determined at 1 franc per meter, less 2 per cent and 1 per cent. The importers contend "that the appraiser has weighed the silk incorrectly, or the value for the silk stated by him is incorrect," and claim that the goods are properly dutiable at the rate of 60 per cent ad valorem under paragraph 402 of said act.

We find from the testimony of the examiner who supervised the classification of the goods in question when they were before the appraiser for advisory classification that the value of the foundation fabric with the appliqué removed is 2.50 francs per meter.

The collector is accordingly instructed to reliquidate the entry on the basis of 2.50 francs per meter as the value of the foundation fabric, exclusive of the appliqué. If on reliquidation of the entry on this basis it appears that the rate found to be applicable in accordance with the rule laid down in the Ewing & Clancey case, *supra*, is the rate claimed by the importers, the protest is sustained; otherwise it is overruled for failure to make the proper claim.

No. 36135.—Silk Trimmings.—Protest 677537–43461 of G. W. Sheldon & Co. (Chicago). Opinion by Howell, G. A.

Merchandise returned as silk trimmings and classified under paragraph 402, tariff act of 1909, was claimed dutiable as silk ribbons (par. 401). Protest overruled.

No. 36136.—Silk Hair Nets.—Protests 564227, etc., of A. C. Frazer & Co. (Philadelphia). Opinion by Howell, G. A.

Protests overruled as to silk hair nets classified under paragraph 350, tariff act of 1909.

No. 36137.—Silk Belting—Five Per Cent Discount.—Protest 732366–46947 of G. W. Sheldon & Co. (Chicago). Opinion by Howell, G. A.

Certain silk belting was held properly classified under paragraph 316, tariff act of 1913. A further claim for a discount of 5 per cent under subsection 7, paragraph J, section 4, tariff act of 1913, was also overruled, no evidence having been offered to show that the merchandise was imported in a vessel admitted to registration under the laws of the United States. G. A. 7540 (T. D. 34246) followed.

Before Board 3, July 16, 1914.

No. 36138.—Bran—Similitude Clause.—Protests 715387, etc., of Wm. A. Bird et al. (Buffalo).

Hay, *General Appraiser:* The merchandise in these cases consists of bran assessed for duty under paragraph 480 of the tariff act of 1909 and claimed to be dutiable under paragraph 239 by virtue of paragraph 481. In F. W. Myers & Co.'s case, Abstract 31249 (T. D. 33160), this board held bran to be dutiable as here assessed, but upon appeal the board was reversed upon stipulation and the merchandise held dutiable as here claimed. In subsequent cases this board has held that bran was dutiable under paragraph 239 by similitude, but in each case upon a stipulation of counsel. These cases were submitted upon the record, which in each instance consists only of the protest, collector's letter, and entry. No testimony was taken and no sample offered.

The similitude clause of paragraph 481 is one which should be applied with great care and only upon a record which distinctly shows the similarity of the merchandise to that claimed to be applicable by virtue of paragraph 481. From the above history there is no decision of the Court of Customs Appeals wherein the question was at all considered by the court. With such being the history of the decided cases and the record before us as unsatisfactory as it is, the collector's action should not be reversed. The protests are therefore overruled.

No. 36139.—Protests Abandoned.—Protests 408379, etc., of F. L. Roberts & Co. (Boston), and protests 407462, etc., of Baker Castor Oil Co. (New York).

Protests abandoned.

Decisions on Applications for Rehearings.

No. 36140.—Rehearing Granted—Imitation Precious Stones.—Application by the protestants for rehearing in protest 630384 of American Bead Co. (New York), decided March 27, 1914, Abstract 35288 (T. D. 34355). No. 749. Before Board 1, July 7, 1914.

No. 36141.—Rehearing Granted—Miners' Safety Apparatus.—Application by the Government for rehearing in protest 720512 of S. I. Oettinger (New York), decided June 17, 1914, Abstract 35912 (T. D. 34571). No. 772. Before Board 2, July 7, 1914.

No. 86142.—REHEARING DENIED.—Application by the protestants for rehearing in protests 714276, etc., of P. McGettrick et al. (Burlington and Buffalo), decided May 29, and June 3, 1914, Abstracts 35776 and 35793 (T. D. 34521). No. 774. Before Board 3, July 7, 1914.

No. 86143.—REHEARING DENIED.—Application by the protestants for rehearing in protest 497613 of John Rothschild & Co. (San Francisco), decided July 22, 1911, Abstract 26189 (T. D. 31774). No. 328. Before Board 3, July 14, 1914.

No. 86144.—REHEARING DENIED.—Application by the protestant for rehearing in protest 706314 of John Wanamaker (New York), decided June 5, 1914, Abstract 35803 (T. D. 34548). No. 776. Before Board 3, July 14, 1914.

No. 86145.—REHEARING DENIED.—Application by the protestants for rehearing in protest 703289 of Lewis & Conger (New York), decided June 5, 1914, Abstract 35803 (T. D. 34548). No. 777. Before Board 3, July 14, 1914.

TREASURY DEPARTMENT, *July 21, 1914.*

The appended decision of the United States District Court for the Southern District of New York is published for the information of customs officers and others concerned.

WM. P. MALBURN, *Assistant Secretary.*

(T. D. 34653.)

Tea—Read test.

MACY *et al.* v. BROWNE *et al.*

1. EXAMINATION OF IMPORTED TEA.

The "Read test," a method used in examination of tea to detect coloring matter, sustained.

2. JURISDICTION OF SECRETARY OF THE TREASURY.

The Secretary of the Treasury, having power under the statute to enforce the provisions of the tea act by appropriate regulations, has required examiners and the Tea Board to use what is known as the "Read test" to examine for artificial coloring or facing matter.

2. COURT OF EQUITY MAY COMPEL OFFICIAL TO ACT.

A court of equity may lawfully be asked to compel a public official to do an act plainly required of him by law, but that official can never be judicially told how to think.

4. BILL DISMISSED.

The bill of complainant must be dismissed for lack of equity, it not being necessary to consider the question whether the "Read test" is a chemical analysis.

United States District Court, Southern District of New York. July 13, 1914.

[Final hearing in equity.]

Joseph H. Choate, jr., for complainants.

William L. Wemple, Assistant Attorney General, for defendants.

HOUGH, *District Judge:* Complainants lately proffered for entry into the United States at the port of San Francisco certain tea, which the collector of that port rejected as inferior in purity to the established standards because of the presence in the imported tea of certain coloring matter.

In so doing the collector acted in assumed compliance with the "Act to prevent the importation of impure and unwholesome tea," approved March 2, 1897, and of the regulations established by the Secretary of the Treasury pursuant to power conferred upon him by said statute.

Thereupon complainants (pursuant to section 6 of the act) protested against the collector's decision,[1] and caused "the matter in dispute to be referred to a board of three United States general appraisers." The three defendants herein are the general appraisers (commonly called the Tea Board) to whom complainants took what is practically an appeal from the collector's decision.

The object of this suit is to obtain the directions of this court as to how the Tea Board shall decide the matter submitted to it pursuant to the statute, and on the motion of the complainants themselves. It would hardly be admitted by the draftsman of the bill that what I have just said fairly summarizes the purpose of suit, yet I think the justice of the comment will appear from analysis of proven facts and some study of the statute.

The act of 1897 provides for the annual establishment of standard samples of tea, to be kept in stock at convenient ports of entry, and all teas "of inferior purity, quality, and fitness for consumption to such standards" shall not be brought into the United States.

The ascertainment of fitness or unfitness is intrusted in the first instance to an examiner, and from his decision either the Government or importer may "refer the matter in dispute" to the Tea Board. This board must consist of general appraisers, whose general duties, tenure of office, and presumed qualifications are too well known to need further comment, but that the appraisers when constituting the Tea Board are vested with discretionary powers of at least a quasi-judicial nature seems so plain as to require no more than statement. Admittedly, however, any test, inspection, or examination of tea, whether by a single examiner or the board, must be conducted in the manner prescribed by statute. Such prescription is found in section 7, which requires that the "*purity, quality, and fitness for consumption (of tea under investigation) shall be tested according to the usages and customs of the tea trade, including the testing of an infusion of the same in boiling water, and if necessary, chemical analysis.*"

The language quoted gains much in clearness when something is learned of the growth, varieties, preparation, and marketing of the tea leaf.

"Quality," as used in this act, evidently refers to the grade or fineness of the leaf, depending principally on whether the leaf was, when plucked, tender and young or more mature, and also whether the plant producing the leaf was of the best kind or growing under favorable conditions.

"Purity," with equal clearness, refers to the presence or absence of foreign substances, especially those which would be regarded as foul or dirty; but any adulterant, however cleanly or innocuous *per se*, would detract from purity.

"Fitness for consumption" is a phrase which in my opinion adds little if anything to the powers conferred or limitations imposed by the statute, nor has the evidence shown any way in which tea can be unfit for consumption without also being woefully lacking in quality and purity.

The purity of tea has long been debased by "facing" or "coloring" or perhaps both simultaneously. Facing is often (if not usually) intended to increase weight by the admixture of such materials as talc, etc. Coloring has long been thought desirable for "green" teas, of which the color of some (if not most) grades is obtained or improved by mixing Prussian blue, ultramarine, or indigo with the tea while it is being dried. One grain of Prussian blue will color seven pounds of tea, and this substance (which is the "lead" or writing part of a "blue pencil") seems the commonest pigment in use.

[1] The act requires the original test of tea to be made by an "examiner," but the action of the examiner I regard as an act of the collector.

In some (at least) parts of China the preparation of tea is carried on by small farmers. The leaves are dried in mud huts, in primitive ovens, and altogether under conditions necessarily resulting in the deposit of dust and "plain dirt" in the tea leaves. Teas having been colored for generations in these same huts, it is quite possible that forgotten particles of coloring matter may get into tea which it was not intended to color, *i. e.*, change the appearance to the eye. In other words an uncolored tea may contain some coloring matter.

The customs authorities of this country have long tried to exclude colored teas; and the Secretary of the Treasury, having power under the statute to enforce "the provisions of this act by appropriate regulations" has required examiners and the Tea Board to use what is known as the "Read method" to "examine for artificial coloring or facing matter." (Reg. 22.) It is further provided that "should a tea prove * * * inferior to the standard in any one of the requisites, viz, quality, quality of infused leaf, or artificial coloring or facing, *it shall be rejected*, notwithstanding that it be superior to the standard in some of the qualifications." (Reg. 23.)

The Read method consists in calcining under pressure of a spatula and on a piece of clean white paper a small portion of the tea under investigation. If there be coloring matter (of the kinds above enumerated) in the tea, though in the smallest quantities, there will appear even to the naked eye, and certainly through a microscope of no great power, blue specks or streaks on the paper, but ocular investigation will not show whether the blue color is that of ultramarine, indigo, or Prussian blue. The regulation then provides that the specked or streaked paper be sent to a chemist for identification of the pigment. As soon as such identification is made the tea must be rejected.

If black paper instead of white be used, foreign materials other than blue colors will be detected.

The identification of pigment by a chemist, it may be noted, can not change the result—it makes no difference whether the speck turns out to be one blue dye or another, the tea must be rejected, solely because it has coloring matter in it; kind is immaterial, and the quantity practically means any quantity, for the Read test is thorough—how thorough will hereafter appear.

When complainants offered their tea for entry the standard samples used by the Government contained no coloring matter whatever, but, as shown by the evidence, did contain a far greater amount of other foreign substances than did complainants'. It is also proven that the tea refused entry is worth in the open market nearly four times as much per pound as is the standard sample by which its acceptance or rejection was gauged.

I regard it as proven beyond doubt that the sole cause for rejecting the tea in question is that it showed coloring matter under the Read test, and a subsequent analysis, qualitative and quantitative, has revealed the presence of Prussian blue in proportions ranging (in the specimens examined) from nine to nineteen parts of blue in a million of other and unobjected-to elements.

There is an agreement of counsel that Prussian blue can not be proved to produce any deleterious results; it is found mentioned in the United States Pharmacopœia as a drug sometimes used for common purposes, and in the quantities existing in this tea it might be arsenic without producing injury.

The foregoing findings of fact are not made because either court or counsel think this jurisdiction was invoked to pass upon the sense or folly of rejecting tea such as that above described. These findings seem a necessary preliminary to justifying the original assertion that this action is brought to obtain directions for the Tea Board as to how to decide complainants' appeal.

Complainants' contention is this: (1) The act of 1897 limits the right of importing tea only in certain specified particulars; (2) the presence of coloring matter is not *per se* one of the specified grounds for rejection; (3) the only lawful reason for rejection is

inferiority to the standard sample in purity, quality, and fitness for consumption, and such microscopic portions of Prussian blue as are here shown do not constitute impurity nor show unfitness in any way; (4) such inferiority, however, can only be ascertained in the specified statutory method, viz, by tests "according to the usages and customs of the tea trade, including the testing of an infusion * * * in boiling water and if necessary chemical analysis;" (5) the Read test was unknown to the tea trade in 1897, being admittedly of more recent invention, and it is not a chemical analysis.

Asserting these premises, the bill prays that the Tea Board be compelled by mandatory injunction (*a*) not to use the Read test, and (*b*) not to base its decision on the "mere presence of material adapted for use as coloring, irrespective of whether said matter is harmful."

Plainly, if the Tea Board were shown everything proven in this court and then restrained from considering the Read test, it would be aware that there was coloring matter in harmless quantities in the tea, and if it were then directed to disregard that fact there would be nothing left except evidence that the complainants' tea was better and cleaner and more valuable than the standard, and must be admitted.

If this in effect is not asking this court to sit as a Tea Board, I fail to understand the bill.

Of course the request is to sit in more than one case, for the decree prayed for would be a guide for all subsequent cases of color in tea.

The form in which an action is brought is oftentimes still determinative of its fate. This suit is for injunctive relief, and there are, I am sure, several reasons why that form of relief can not and should not be granted.

If it is ever right to coerce or guide the decision of any tribunal, an opportunity must surely first be given for the defendant organization to do something—it must have a chance to do right before it is assumed to be about to go wrong. This action asserts error before it is committed, and for this reason alone I should refuse injunction.

This argument complainants seek to avoid by pointing out that regulations 22 and 23 deprive the Tea Board of all power to pass upon the "purity" and "quality" of tea if the Read test shows color, for when that occurs "it shall be rejected." If this be the intent of the regulations, they are, in my opinion, futile, for the powers of the Tea Board are derived from the statute itself—it is quite independent of the Secretary, and bound to hold (if such is the opinion of its members) that the presence of coloring matter in harmless quantities does not constitute an inferiority in purity or quality. The Secretary can no more compel the Tea Board to decide any question lawfully coming before it in any particular way than he can so act toward any other lawfully constituted tribunal.

The real question presented to the original examiner, to the Tea Board, and sought to be laid before this court is whether the standard samples of tea are to be interpreted (so to speak) narrowly or broadly. The samples are chosen by a board of experts (sec. 2) who are not employees of the Treasury for any other purpose. They have chosen a standard sample which is neither colored nor contains color, so that the real question is whether failure to comply with the standard in the matter of color or coloring matter alone is to be considered an inferiority in purity or quality. This is emphatically a matter of opinion, of discretion.

The conclusion that the matter in dispute is one of discretion leads me to dispose of this case by a reference to the recent decision of the Supreme Court in State of Louisiana *v.* McAdoo (June 22, 1914). As the matter is there put, the courts "will refuse to substitute their judgment or discretion for that of the official entrusted by law with its execution." It is enough if the act to be enforced by mandamus or forbidden by injunction be not ministerial; this question of tea is plainly not that. I have refrained from considering whether the Board of General Appraisers is not entitled to the further protection accorded to a judicial body.

The cases cited in the decision just mentioned render any further citation unnecessary. To sum the matter up, a court of equity may lawfully be asked to compel a public official to do an act plainly required of him by law, but that official can never be judicially told how to think. If he be empowered ministerially only, what he thinks is immaterial; if the law tells him to think and act on his opinion, any judicial advice is in its turn immaterial and indeed impertinent.

As the bill must be dismissed for lack of equity, it is not necessary to consider the inquiry whether the Read test is a chemical analysis. It may, however, be pointed out that an unquestioned chemical analysis of complainants' tea, both qualitative and quantitative, has been made, and the result put in evidence. What is important is the truth, not the way of getting at it. The effect of that proven truth is for the Tea Board—not this court.

Bill dismissed.

(T. D. 34654.)

Drawback on automobiles and automobile parts.

T. D. 34153 of February 6, 1914, extended to cover automobiles and automobile bodies manufactured by J. M. Quinby & Co., of Newark, N. J., with the use of various imported materials, parts, and articles.

TREASURY DEPARTMENT, *July 21, 1914.*

SIR: The department's regulations of February 6, 1914 (T. D. 34153), providing for the payment of drawback on automobiles manufactured by the Benz Auto Import Co. with the use of various imported materials and parts, are hereby extended to cover automobiles and automobile bodies manufactured by J. M. Quinby & Co., of Newark, N. J., with the use of imported chassis, aluminum, hardware, metal fittings, plate glass, woolen carriage cloth, various kinds of laces, carpet, waterproofed fabrics for tops, leather, metal chains, rubber tires, and other fabrics and materials.

The sworn statement of the manufacturers, dated July 3, 1914, is transmitted herewith for filing in your office.

Respectfully, WM. P. MALBURN,
(101006-6.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34655.)

Drawback on bottle stoppers.

T. D. 30459 of March 25, 1910, is extended to cover bottle stoppers manufactured by the Interstate Bottle Stopper Co., of New York, N. Y., from imported cork disks and domestic tin for the account of Ferdinand Gutmann & Co., of New York, N. Y.

TREASURY DEPARTMENT, *July 21, 1914.*

SIR: The department's regulations of March 25, 1910 (T. D. 30459), providing for the payment of drawback on bottle stoppers manufactured by the Crown Cork & Seal Co., of Baltimore, Md., with the use of imported disks and domestic tin, are hereby extended to cover

bottle stoppers manufactured by the Interstate Bottle Stopper Co., of New York, N. Y., with the use of imported cork disks and domestic tin for the account of Ferdinand Gutmann & Co., of New York, N. Y.

The sworn statement of the manufacturers, dated June 30, 1914, is transmitted herewith for filing in your office.

Respectfully, WM. P. MALBURN,
(64832.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34656.)

Drawback on railway passenger coaches.

Drawback on railway passenger coaches manufactured by the Osgood Bradley Car Co., of Worcester, Mass., with the use of imported glass windows.

TREASURY DEPARTMENT, *July 21, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on railway passenger coaches manufactured by the Osgood Bradley Car Co., of Worcester, Mass., with the use of imported glass windows.

A manufacturing record shall be kept, which will show, in addition to the usual import data, the number of imported glass windows of each size and kind (describing the same as in import invoices) appearing in each railway passenger coach manufactured for exportation with benefit of drawback. An abstract from such manufacturing record shall be filed with each drawback entry.

The allowance shall not exceed the number of imported glass windows appearing in the exported railway passenger coaches, as shown from the abstract from the manufacturing record.

The sworn statement of the manufacturers, dated July 3, 1914, is transmitted herewith for filing in your office.

Respectfully, WM. P. MALBURN,
(102326.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 34657.)

Gauge of gin.

Conventional gauge of Gordon & Co.'s dry gin imported in bottles with oval sides, 23 fluid ounces per bottle.—Gauge established for the gin in T. D. 29679 of April 9, 1909, revoked.

TREASURY DEPARTMENT, *July 22, 1914.*

SIR: The department refers further to your letter of the 18th ultimo in relation to the gauge of Gordon & Co.'s dry gin imported in bottles with oval sides.

The collector at New York reports that careful tests made by the appraiser at that port show the capacity of this style of bottle to be approximately 23 fluid ounces.

In view of this report, 23 fluid ounces per bottle is adopted as the average or conventional gauge for Gordon & Co.'s dry gin imported in bottles with oval sides and you are hereby authorized to accept the same on importations of such gin contained in this style of bottle where the actual gauge is not taken. An actual gauge should, however, be made from time to time in conformity with the department's instructions of May 15, 1907 (T. D. 28161).

As the New York representatives of Gordon & Co. state that this gin is now imported exclusively in bottles with oval sides, the conventional gauge of 23⅛ fluid ounces established in T. D. 29679 of April 9, 1909, for Gordon's dry gin in old-style bottles is hereby revoked.

Respectfully, WM. P. MALBURN,
(60119.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Galveston, Tex.*

(T. D. 34658.)

Values of foreign coins—German mark and English pound sterling.

The correct value for the German mark is $0.238 and for the English pound sterling $4.8665.—T. D. 34610 of July 1, 1914, amended accordingly.

TREASURY DEPARTMENT, *July 22, 1914.*

SIR: The department refers to your letter of the 14th instant, inviting attention to the values stated in T. D. 34610 for the German mark and the English pound sterling.

The Director of the Mint states that the correct value for the German mark is $0.238, and for the English pound sterling $4.8665, and that the original table as printed from his copy shows such values.

It appears, therefore, that the error occurred in the printing of the table for insertion in the weekly Treasury Decisions. T. D. 34610 is hereby amended by correcting the value of the German mark to read $0.238 and the value of the English pound sterling to read $4.8665.

Respectfully, WM. P. MALBURN,
(97654.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Buffalo, N. Y.*

(T. D. 34659.)

Customs stamps for cigars made in bonded manufacturing warehouses.

Proprietors of bonded manufacturing warehouses are required to pay collectors of customs at the rate of $10 per 1,000 for customs stamps to be affixed to boxes containing cigars made in bonded premises.

TREASURY DEPARTMENT, *July 22, 1914.*

SIR: Referring to the various requisitions made by your office for stamps to be affixed to boxes containing cigars made in a bonded

manufacturing warehouse under the provisions of the act of October 3, 1913, I have to request that the proprietors of the bonded premises using such stamps be charged therefor at the rate of $10 per 1,000 stamps, and that collections be made promptly for stamps heretofore furnished the different manufacturers. It is also requested that in the future collection of charges for said stamps be made at the time of the delivery thereof to the purchaser.

The amounts collected should be accounted for under the provisions of T. D. 33557 and T. D. 34049.

Respectfully, WM. P. MALBURN,
(100576.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Jacksonville, Fla.*

(T. D. 34660.)

Appraisement—Dies.

The cost of the die used in stamping articles should be included in the appraised value of the article when it appears that such cost was paid by the purchaser.

TREASURY DEPARTMENT, *July 24, 1914.*

SIR: The department is in receipt of reports, from which it appears that there is a lack of uniformity in the appraisement of merchandise stamped with a special die, for which a charge is made independent of the price stated on the invoice for the goods.

At some ports it is the practice of the appraiser to include the cost of the die in the market value of the goods and at other ports this item is not included.

The department is of the opinion that articles stamped with a special die are in the same category as wearing apparel made to order; that the special imprint of an article or the cut and fit of a garment adds an element separating it from the general class of merchandise not so stamped or made to order, and gives it a peculiar value to the purchaser; that such articles are not comparable in value with merchandise not so made to order or stamped or printed with a special design; and that the dutiable value of such an article stamped with a special die is the value of the article plus the cost of the stamping.

In view of the foregoing, the department is of the opinion that the cost of dies should be included in the appraised value whenever it appears by the invoice or otherwise that such cost was paid by the purchaser to the manufacturer or seller. You will be governed accordingly.

Respectfully, WM. P. MALBURN,
(97126.) *Assistant Secretary.*

UNITED STATES APPRAISER, *New York.*

(T. D. 34661.)

Beaded lumber and novelty siding.

Appeal directed from decision of the Board of United States General Appraisers of July 7, 1914, Abstract 36067 (T. D. 34629), involving the classification of novelty siding and beaded lumber imported under the present tariff act.

TREASURY DEPARTMENT, *July 25, 1914.*

SIR: I have to acknowledge the receipt of your letter of the 18th instant, inviting attention to the decision of the Board of United States General Appraisers, Abstract 36067 (T. D. 34629), involving the classification of novelty siding and beaded lumber imported under the present tariff act.

In view of the importance of the issue, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the board's decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act.

Respectfully, WM. P. MALBURN,
(97773.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 34662.)

Drawback on sugars and sirups.

T. D. 33062 of January 3, 1913, amended by striking out the last paragraph of article 11 thereof.

TREASURY DEPARTMENT, *July 27, 1914.*

To collectors of customs and others concerned:

The department's regulations of January 3, 1913 (T. D. 33062), providing for the payment of drawback on hard and soft refined sugars and sirups, are hereby amended by striking out the last paragraph of article 11 thereof, which reads as follows:

If any soft refined sugar is produced from the lot of raw sugars from which the sirup is manufactured, before making the apportionment above provided for the total weight of the sugar impurities in such soft refined sugar as shown by the polariscope shall be deducted from the total weight of the sugar impurities in the dutiable raw sugars used in the manufacture of such lot.

(62354.) WM. P. MALBURN, *Assistant Secretary.*

(T. D. 34663.)

Drawback on sugars and sirups.

T. D. 33062 of January 3, 1913, amended to provide for the distribution of drawback between sugars and sirups in accordance with the provisions of paragraph O of section 4, tariff act of 1913.

TREASURY DEPARTMENT, *July 27, 1914.*

To collectors and other officers of the customs:

The department's regulations of January 3, 1913 (T. D. 33062), providing for the payment of drawback on hard and soft refined

sugars and sirups manufactured from imported full-duty raw sugars, Cuban raw sugars, and Philippine raw sugars, upon which duty has been paid, either wholly or in combination with free imported raw sugars, or raw sugars of domestic origin, are hereby amended as follows:

When both sugar and sirup or molasses are manufactured from imported raw sugars, the sirup or molasses shall be considered a by-product and the drawback payable fixed and ascertained in the following described manner:

On the 1st day, or as soon thereafter as practicable, of January, April, July, and October of each year there shall be filed with the collector of customs by each refiner two 8-ounce samples of each lot of sirup produced during the preceding three months (whether made from dutiable or free sugar). There shall be filed with such samples a certificate by the head refiner, superintendent, or some other officer of the company having knowledge of the facts to the effect that the samples truly represent the sirup manufactured during the quarter specified.

Upon the sale of a sirup either for domestic consumption or for exportation the producer shall furnish, as soon as possible thereafter, to the United States appraiser at the port where abstracts from his refinery records are on file a sworn statement of such sale, showing (1) the date of sale, (2) the contract number or other symbol by which the sale may be located on his books, (3) the quantity of sirup sold, and (4) the actual selling price per gallon, noting all discounts and trade allowances.

One of the 8-ounce samples referred to above shall be submitted to the appraiser, who shall report to the collector the polariscopic test thereof and the average wholesale market value of similar sirup in the principal markets of each of the countries from which raw sugars are imported. If the appraiser shall be unable to ascertain and report the wholesale prices or market value by reason of the fact that sirup of such character is not actually sold or offered for sale in the usual wholesale quantities in the principal markets of such foreign countries, he shall ascertain and report the value thereof in the manner provided by paragraph L of section 3 of the tariff act of October 3, 1913, ~~using as~~ a basis the values of such sirup in the United States during the period covered by the samples submitted, as shown by the sworn statements of sale furnished by the producer.

In the liquidation of abstracts from the refinery records the drawback distributed to the sirup may equal the duty which would be assessable on a similar sirup under the tariff act of 1913, predicated on the foreign market value returned by the appraiser for sirup produced by such refinery during the quarter preceding the beginning of the refining period covered by such abstract.

The remaining 8-ounce samples of sirup shall be retained by the collector. From time to time samples shall be taken from export shipments of sirup and compared with the samples furnished by the manufacturer upon which the drawback allowance is predicated. If, in the judgment of the collector, the samples so taken are not comparable with the samples filed with the collector the facts shall be reported to the department for instructions.

T. D. 34331 of March 31, 1914, and T. D. 34392 of April 17, 1914, are hereby revoked.

(62354.) WM. P. MALBURN, *Assistant Secretary.*

(T. D. 34664.)

Drawback on sugar and sirups.

Amending T. D. 34340 of April 2, 1914, with respect to the abstract from the refinery record, and prescribing the manner in which stock in process at the beginning and ending of refining periods shall be accounted for.

TREASURY DEPARTMENT, *July 27, 1914.*

To collectors of customs and others concerned:

The department's regulations of April 2, 1914 (T. D. 34340), amending T. D. 33062 of January 3, 1913, providing for the payment of drawback on refined sugars and sirups, with respect to the abstract from the refinery records to be filed, are hereby amended to provide that such abstract from the refinery record shall also show the stock in process in pounds and the approximate sucrose content at the beginning and end of the melt period covered thereby.

The stock in process at the beginning of a period, as shown by the abstract, to be liquidated shall be reduced to factors representing free and duty-paid raw sugar in the following manner:

1. Ascertain the proportions of dutiable and free sugar melted during the preceding period.

2. Ascertain the average rate of duty per pound paid on the dutiable raw sugar melted during the preceding period by dividing the total duty paid, as shown by the abstract covering such period, by the total weight of the dutiable raw sugar melted.

3. Ascertain the average test of the dutiable raw sugar melted during the preceding period by the following computations:

(*a*) Deduct from the average rate of duty per pound the duty assessable on 1 pound of raw sugar testing 75° under the tariff in effect at the time the raw sugar was imported.

(*b*) Divide the remainder of the average duty per pound by the rate of duty for each additional degree under the tariff in effect at the time the raw sugar was imported.

(*c*) Add the resulting number of degrees to 75°.

4. Ascertain the average test of free sugar melted during the preceding period by dividing the total polarization by the total number of pounds melted.

5. Reduce the stock in process to a factor representing sugar polarizing 100.

6. Divide the factor representing sugar polarizing 100 into factors representing dutiable and free sugar according to the percentage of each melted during the preceding period.

7. Reduce the factor representing dutiable sugar polarizing 100 to a factor representing dutiable raw sugar by dividing the total number of pounds by the average polarization of dutiable sugar melted during the preceding period.

8. Ascertain the duty paid on such raw sugar by multiplying the number of pounds by the average rate of duty per pound paid on dutiable sugar during the preceding period.

9. Reduce the factor representing free sugar polarizing 100 to a factor representing free raw sugar by dividing the total number of pounds by the average polarization of free raw sugar melted during the preceding period.

The stock in process at the beginning of the period reduced to factors representing dutiable and free raw sugars in the manner provided for above shall then be added to the dutiable and free sugar melted during the period covered by the abstract to be liquidated and given the same value in the computations as dutiable and free raw sugars melted during such period.

The stock in process at the end of the period, as shown by the abstract to be liquidated, shall also be reduced to factors representing dutiable and free raw sugar in the manner described above, predicated, however, on the sugars melted during such period. The quantity of free raw sugar and the quantity of dutiable raw sugar represented in the stock in process at the end of the period shall then be deducted from the total quantities of free and dutiable raw sugars, including that represented by the stock in process at the beginning of the period melted during the period covered by the abstract.

The abstract shall then be liquidated on the basis of the remaining free and dutiable sugars melted during the period in the manner prescribed in T. D. 33062.

Where no abstract covering the period immediately preceding is filed, the stock in process at the beginning of the melt period covered by the abstract to be liquidated shall be considered as the product of wholly free raw sugar.

The amendment of the regulations prescribed herein shall become effective 30 days from the date hereof. Unliquidated abstracts from refinery records filed prior to such date may be liquidated in accordance with the practice heretofore obtaining.

(62354.) WM. P. MALBURN, *Assistant Secretary.*

(T. D. 34665—G. A. 7588.)

Hedge shears.

Hedge shears, specially designed for use in pruning or trimming hedges, trees, shrubbery, etc., are properly free of duty as agricultural implements under paragraph 391, tariff act of 1913, as claimed, rather than subject to duty under paragraph 128 of said act as shears and scissors, as assessed, the former being the more specific provision therefor.

United States General Appraisers, New York, July 22, 1914.

In the matter of protest 742388 of Hermann Boker & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers; COOPER, G. A., not participating).

FISCHER, *General Appraiser:* The merchandise in question, consisting of shears used for clipping and trimming hedges, was assessed with duty at 30 per cent ad valorem under the following provision in paragraph 128 of the act of 1913:

Par. 128. * * * Scissors and shears, and blades for the same, finished or unfinished, 30 per centum ad valorem.

The claim alleged in the protest is that said articles are properly entitled to free entry under the following paragraph of said act:

Par. 391. Agricultural implements: Plows, tooth and disk harrows, headers, harvesters, reapers, agricultural drills and planters, mowers, horse rakes, cultivators, thrashing machines, cotton gins, machinery for use in the manufacture of sugar, wagons and carts, and all other agricultural implements of any kind and description, whether specifically mentioned herein or not, whether in whole or in parts, including repair parts.

In his special report the appraiser describes the disputed merchandise as "so-called hedge shears, shears made with blades especially suited for pruning trees and shrubbery."

In view of the testimony of the examiner for the Government that similar merchandise to that here involved was heretofore returned by him and passed free of duty by the collector as agricultural implements, and by reason of the special report of the appraiser herein that the shears in question are specially suited for pruning trees and shrubbery, the first question which naturally presents itself for determination is whether such treatment or cultivation of trees and shrubbery properly pertains to the science of agriculture or of horticulture. It appears, however, that no evidence was introduced by either party on this point, and the determination of that question must therefore rest upon the meaning of those terms as ordinarily, commonly, and generally understood and accepted, and the only available method of arriving at such understanding is to have recourse to the dictionary definitions.

Standard:

Agriculture.—The cultivation of the soil for food products or any other useful or valuable growths of the field or garden.

Horticulture.—1. The cultivation of a garden or the mode of cultivation employed in a garden. 2. That department of the science of agriculture which relates to the cultivation of gardens or orchards, including the growing of vegetables, fruits, flowers, or ornamental shrubs and trees.

Century:

Agriculture.—The cultivation of the ground; especially cultivation with the plow and in large areas in order to raise food for man and beast; husbandry, tillage, farming.

Horticulture.—The cultivation of a garden; the art of cultivating or managing gardens.

The Standard is the later of these two authorities, and its definitions may safely be said to embody the present-day usage and common understanding of the terms in question. As a matter of fact, all of the authorities which we have examined are a unit in holding that horticulture is that branch of the science of agriculture which pertains principally to the cultivation and upkeep of fruit or vegetable gardens, trees, shrubbery, etc. It is a common thing in ordinary speech to refer to the piece of ground, usually adjacent to the home, whereon vegetables, flowers, shrubs, etc., are raised as a "home garden," a "kitchen garden," or a "truck garden," and the implements and tools employed in the cultivation and care of such gardens are as truly agricultural implements and as much entitled to the benefits of free entry under said paragraph 391 as are the particular articles therein designated by name.

Among the agricultural implements listed in the Standard Dictionary are "shears and scissors," "hedging tools," referring, of course, to articles of that description especially designed for use in pruning and trimming hedges, trees, shrubs, etc. The articles here under consideration are distinctively of that character; they are of a class separate and distinct from the ordinary shears of commerce which are employed in factories and households for cutting fabrics and similar goods. If the articles here in question are not agricultural implements or tools, then they have no commercial suitability or use, for it is utterly impracticable to use them for any other line of work than that for which they were specially constructed and designed, viz, for pruning and trimming hedges, trees, shrubs, etc.

The next question to be determined is whether the provision for scissors and shears is more specific than that for agricultural implements. In enacting said paragraph 391, Congress evidently intended to provide free entry for all kinds of agricultural implements. This congressional intent is clearly manifested by the plain language of the statute itself, which is of the widest and broadest scope. After designating certain articles specifically by name, Congress was careful to remove any question of its purpose to accord free entry to all

agricultural implements, and to that end made use of this clear and unambiguous language—"and all other agricultural implements of any kind and description, whether specifically mentioned herein or not, whether in whole or in parts, including repair parts."

While it is true that the disputed articles are known as hedge shears, they are nevertheless agricultural implements by reason of their peculiar construction and the only use to which they may be employed. We are, therefore, of opinion that said articles are more specifically provided for as agricultural implements than as shears and scissors.

The protest is accordingly sustained and the decision of the collector reversed.

(T. D. 34666—G. A. 7589.)

Finality of board's decision.

1. LEGAL STATUS OF BOARD OF UNITED STATES GENERAL APPRAISERS.

By subsection 12 of section 28, tariff act of 1909, the Board of United States General Appraisers, in the trial and determination of issues arising under the tariff law, is created a court in everything but name—a court of limited jurisdiction, but within that jurisdiction its powers are made as ample as those of the United States Circuit Court.

2. FINALITY OF BOARD'S DECISION.

The decisions of the Board of United States General Appraisers, in cases where it has jurisdiction of the subject matter and the persons, are not only final and conclusive, not only presumed to be correct, but are absolute verity when the same have not been appealed from in the manner prescribed by law, and are to be treated as such in any collateral proceeding. Voorhees *et al. v.* United States Bank (10 Pet., 449). It must be presumed by every court that when the board renders a decision with reference to the classification of merchandise it does so upon ample proof and the conclusion reached must stand as the law and be accepted as such unless appealed from and reversed in the manner prescribed by law. Hilton's Administrators *v.* Jones (159 U. S., 584).

3. CREDENCE TO BE GIVEN THE BOARD'S DECISION.

By subsection 14 of section 28, tariff act of 1909, the decision of the Board of United States General Appraisers in classification cases, when acting within its jurisdiction, is made final and conclusive upon all persons interested, except in cases appealed to the United States Court of Customs Appeals in the manner provided by law.

United States General Appraisers, New York, July 22, 1914.

In the matter of protest 711948 of Sommerich & Loewith against the assessment of duty by the collector of customs at the port of New York.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

HAY, *General Appraiser:* The merchandise in this case is coffee from which a portion of the caffein has been extracted. Duty was assessed under paragraph 294 of the tariff act of 1909, which reads as follows:

Par. 294. Dandelion root and acorns prepared, and articles used as coffee, or as substitutes for coffee not specially provided for in this section.

The protestants claim the merchandise to be free under paragraph 541, which reads:

Par. 541. Coffee.

The only witness called was the examiner at the port of New York who examined the merchandise in this case. He testified that the merchandise was the same as that in Merck & Co.'s case, G. A. 7464 (T. D. 33463), with the exception that in the case at bar the coffee had been roasted and packed in sealed tins. This difference does not, in our judgment, affect the operation of the two paragraphs of the law quoted above upon the commodity in question.

The statement of facts drawn from the testimony in Merck & Co.'s case, *supra*, upon which the case was decided is as follows:

The testimony shows the commodity in question to be the ordinary coffee of commerce, from which, by some process, 80 per cent of the caffein has been extracted. By this process the integrity of the bean is not destroyed and it, in every respect, resembles coffee in appearance.

From the testimony in the case at bar we understand by all the principles of law applicable to judicial, quasi judicial, or administrative tribunals the facts as judicially found by the board in Merck's case, *supra*, are made the facts in this case as conclusively as if they appeared from the testimony of witnesses.

By subsection 12 of section 28 of the act of 1909 the Board of United States General Appraisers in the trial and determination of issues arising under the tariff law is created a court in everything but name—a court of limited jurisdiction it is true, but within that jurisdiction its powers are made as ample as those of the United States Circuit Court. By subsection 14 of section 28 the decision or determination of the Board of United States General Appraisers in classification cases, when acting within its jurisdiction, is made final and conclusive upon all persons interested, except where the case is appealed to the United States Court of Customs Appeals in the manner provided by law. The decision in Merck & Co.'s case, *supra*, is therefore the decision of a tribunal with all the functions and powers of a court of limited jurisdiction, and if the same is not appealed from, and is transmitted to the collector as provided by law, it becomes a judgment of that tribunal and is subject to all of the rules of law applicable to the judgments of courts of record.

A rule of law so universal as to admit of no exception is that the judgment of a court in a matter in which it has jurisdiction of the subject matter and the persons can not be attacked in a collateral proceeding, and, unless appealed from, is to be treated as a verity. (See 23 Cyc., 1060.) The rule and the philosophy of the rule is very clearly stated by the learned judge who decided the case of Voorhees *et al. v.* United States Bank (10 Pet., 449):

The line which separates error in judgment from the usurpation of power is very definite, and is precisely that which denotes the cases where a judgment or decree is reversible only by an appellate court, or may be declared a nullity, collaterally, when

it is offered in evidence in an action concerning the matter adjudicated or purporting to have been so. In the one case, it is a record importing absolute verity; in the other, mere waste paper. There can be no middle character assigned to judicial proceedings which are irreversible for error.

The decisions of the Board of United States General Appraisers, therefore, in cases wherein it has jurisdiction, are not only final and conclusive, not only presumed to be correct, but are absolute verity when the same have not been appealed from in the manner prescribed by law, and are to be treated as such in any collateral proceeding.

In the case of Hilton's Administrator *v.* Jones (159 U. S., 584) Justice Brown, in writing the opinion of the court in a case involving the same facts adopts the following language of the Supreme Court of Nebraska:

All presumptions are in favor of the regularity of that proceeding. We must presume that the district court which rendered the decree did so upon ample proofs of title, and that the decree being still in full force is binding and settles the question of title.

In line with this, it must be presumed by every court that when the Board of United States General Appraisers renders a decision with reference to the classification of merchandise it does so upon ample proof, and the conclusion reached must stand as the law and be accepted as such unless appealed from and reversed in the manner prescribed by law.

In Laing *v.* Rigney (160 U. S., 531), at page 542 of the opinion, it is said:

The settled rule of law is that jurisdiction having attached in the original case, everything done within the power of that jurisdiction, when collaterally questioned, is to be held conclusive of the rights of the parties unless impeached for fraud. Every intendment is made to support the proceeding. It is regarded as if it were regular and irreversible for error. In the absence of fraud no question can be collaterally entertained as to anything lying within the jurisdictional sphere of the original case. Infinite confusion and mischiefs would ensue if it were otherwise. These remarks apply to the order of sale here in question. The County Court had power to make it and did make it. It is presumed to have been properly made, and the question of its propriety was not open to examination upon the trial in the Circuit Court. These propositions are sustained by a long and unbroken line of adjudications in this court. The last one was the case of McNitt *v.* Turner (16 Wall., 366).

In Cornett *v.* Williams (20 Wall., 227) it was held that where a county court having jurisdiction to authorize a sale ot a decedent's estate for his debts does authorize it and the sale is made, the sale must be presumed to have been regularly made and in the absence of fraud the question of its propriety was not open to examination otherwise than in an appellate court in a proceeding had directly for that purpose. The decision of the Board of United States General Appraisers in Merck & Co.'s case, *supra*, must therefore be presumed to be correct in every respect, and its propriety can not be called in question except in an appeal directly from that decision. See also United States Trust Co. *v.* Mercantile Trust Co. *et al.* (88 Fed., 140).

But even if the Board of United States General Appraisers was not a judicial tribunal, but was a mere administrative body, the rule as to the presumption of the correctness of its decisions would be the same—its decisions could not be called in question in any collateral proceeding. Its decisions upon questions of fact would be conclusive and would have to be treated as absolute verity, except on direct appeal therefrom. (23 Cyc., 1062.) In Cornett *v.* Williams, *supra,* it is said:

As regards public officers, "acts done which presuppose the existence of other acts to make them legally operative are presumptive proofs of the latter." (Bank of the United States *v.* Dandridge, 12 Wheat., 70.) "Facts presumed are as effectually established as facts proved, where no presumption is allowed." In the case of Ward's Lessee *v.* Barrows (2 Ohio State, 247) a sale for taxes came under examination. It was held that certain acts of the county auditor were presumptive proofs that he had administered to the collector the oath prescribed by law touching the delinquent list. The sale was sustained.

Where the Board of United States General Appraisers has decided a case involving the classification of merchandise, it is presumed that that decision was rendered upon proper proof and that the conclusion reached was in accordance with law, and, unappealed from, such decision must be treated as a verity and respected as such in all collateral proceedings.

In the case at bar the conclusion reached is that the merchandise in question in no material respect differs from that which was the subject of this board's decision in Merck & Co.'s case, *supra,* and the presumption being that that decision was rendered upon sufficient and proper proofs, we follow the principles of law there announced and sustain the protest, applying to it the provisions of paragraph 541. The collector will reliquidate the entry accordingly.

(T. D. 34667—G. A. 7590.)

Spanish red peppers or pimentos.

1. SPANISH RED PEPPERS—VEGETABLES—COMMERCIAL DESIGNATION.

Spanish red peppers or pimentos, consisting of the pulp or meat of the pepper, with the skin and seeds removed, put up in small hermetically sealed tins, are dutiable as prepared vegetables under paragraph 252, tariff act of 1909, the evidence not showing that they are excluded by commercial designation from classification as vegetables.

2. VEGETABLES—COMMERCIAL DESIGNATION.

The term "vegetables" as used in paragraph 252, tariff act of 1909, is not shown by the evidence to have any different meaning by virtue of commercial designation than is given to it in ordinary usage.

United States General Appraisers, New York, July 22, 1914.

In the matter of protests 564401, etc., of Austin, Nichols & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers; SOMERVILLE, G. A., not participating).

WAITE, *General Appraiser:* The goods in question here are invoiced as red peppers. They appear from the testimony to be what is

known as Spanish red peppers or pimentos. An inspection of the goods show them to be the pulp or meat of the pepper, from which the skin has been removed and the seeds extracted, leaving the pepper in its entirety otherwise, the same being placed in a small tin and hermetically sealed, after sterilization. It is of rather a sweetish insipid taste, but a brilliant red in color. We are told by the witnesses that nothing is placed with the pepper in the can; that the juice, of which there is a considerable amount, has exuded from the pepper as a result of the packing and other treatment, such as sterilization and hermetical sealing, to which the goods have been subjected.

These goods were assessed at 40 per cent ad valorem under paragraph 252, tariff act of 1909, as prepared vegetables. Several claims are made on the part of the importers. After due consideration, however, we are of the opinion that none of the claims will require attention except the one that the merchandise is dutiable under paragraph 480 as an unenumerated manufactured article.

The board has heretofore passed upon this commodity, holding it to be a prepared vegetable under paragraph 241, tariff act of 1897, as against the claim that it should be dutiable as capsicum or red pepper under paragraph 287 of the same act. Abstract 20126 (T. D. 29429).

The question here involved, however, differs from the question in the above case, because the importers here claim that by commercial designation this commodity is excluded from classification as a vegetable. Considerable testimony was taken upon this point. Witness Mack (p. 4 of testimony), on being asked to explain what is understood in his trade by the term "vegetables," said:

> In our trade it is understood as something from the vegetable kingdom that can be served as a side dish and eaten as such, which is eaten without having any unpleasant taste, like pease, beans, mushrooms, brussels sprouts, spinach.

This, it will be seen, is entirely inadequate as a definition of "vegetables" within the meaning of the statute. It is not difficult to select vegetables which are not used as side dishes; neither is it necessary that a vegetable to be so classified should be pleasant to the taste of everyone. Undoubtedly onions, brussels sprouts, spinach, and mushrooms would be unpleasant to some people.

This witness further stated that he did not remember whether these goods were classified under the head of vegetables in the catalogue issued by his firm previous to 1909. He did state, however, that they were not recognized and sold by his firm as vegetables.

Under the decisions of the courts, in order to establish a commercial designation which shall govern the classification of goods, it must be shown that such designation is the result of usage which is definite, uniform, and general throughout the United States in the trade in which the goods are handled, and that that commercial

designation differs in scope and meaning from the term as commonly used among people or from the dictionary definition.

A vegetable is defined by the Standard Dictionary as follows:

Vegetable. n. A part or the whole of a herb used chiefly for culinary purposes, but also frequently for feeding domestic animals.

In considering this question, it must be borne in mind that the statutory term with which we are dealing is the noun "vegetable" and must not be confused with the adjective "vegetable," used in other parts of the statute to describe and designate entirely different commodities.

Primarily, commercial designation would be established by affirmative proof that the trade meaning of a term differing from the common meaning was used to describe a certain commodity. This case, however, differs somewhat from such cases, it being sought by negative proof to exclude by commercial designation a commodity from the term mentioned in the statute. The courts, however, have passed upon the question in its negative form as raised in this case. We think the language of Judge Lacombe in Sidenberg *v.* Robertson (41 Fed., 763), following the decision in Claflin *v.* Robertson (38 Fed., 92), clearly illustrates the reasoning necessary in the case at bar. He says:

Wheat is a grain, and no amount of testimony that wheat was never bought and sold in trade by any other name than "winter wheat," that that was the only name which was used with regard to it, and that it was never known as "grain" in the trade, would take it out of the classification of "grains" unless it was also shown that the word "grain" had been distorted from its natural meaning and was used by the trade in a restricted meaning, covering only cereals other than wheat.

So, paraphrasing this language in the case at bar, we may say that sweet peppers are vegetables, and no amount of testimony that sweet peppers were never bought and sold in trade by any other name than sweet peppers, and that they were never known as vegetables in the trade, would take them out of the classification of vegetables unless it were also shown that the word "vegetables" had been distorted from its natural meaning and was used by the trade in a restricted meaning covering only vegetables other than sweet peppers.

So also this board, in the capers case, G. A. 7405 (T. D. 32978), used this language:

The importer, in order to sustain his contention [that capers are not pickles], must show that the word "pickles," as used in the statute, has a definite, uniform, and general meaning throughout the trade in the United States, and that that meaning differs from the ordinary understanding of the term.

This decision was affirmed by the Court of Customs Appeals in Austin *v.* United States (4 Ct. Cust. Appls., 261; T. D. 33483).

Has it been shown in this case that the term "vegetables" has any meaning in the trade throughout the United States except the ordi-

nary or common meaning? In order to determine this fact it will be necessary to review somewhat at length the testimony of the various witnesses. We have cited the testimony of witness Mack above.

Witness Reiss, of the firm of Reiss & Brady, said (p. 6 of testimony) that he had sold Spanish red peppers in a wholesale way for 15 years; that he did not know the use to which they are put. Two catalogues of the firm of Reiss & Brady were introduced in connection with Mr. Reiss's testimony for the purpose of establishing the fact that red peppers were not included among vegetables; hence it might be reasoned that they were not included in the trade as vegetables. We fail to see, however, how the catalogues of this firm establish this fact. One of these catalogues (Exhibit A) is dated January 16, 1905. While it is true that "Spanish red pepper" is catalogued therein by itself, we also find that pearl onions, California asparagus, and lentils are listed separately and under different general headings.

The latest catalogue of Reiss & Brady offered was that of November, 1907 (Exhibit B). It was pointed out that "Spanish red pepper" was listed on page 8 under a separate head. We also note in the same catalogue that string beans, spinach, mushrooms, and asparagus precede the "Spanish red pepper," and that pearl onions, California asparagus, and lentils follow, all under separate heads.

The reasons given by witness Reiss for excluding these peppers from classification as vegetables seem to us weak and unconvincing. He says they can not be eaten as vegetables, their taste renders them unfit; their taste is strong, pungent, repellent; not impossible to eat them, but nobody would eat them because repelling to the taste. (See testimony of witness Schwiers, *infra*, which contradicts this.)

Witness Steyer (p. 10) was placed upon the stand evidently to identify a catalogue of Meyer & Lange introduced in evidence (Exhibit C). We gather from the catalogue that they are dealers in foodstuffs, vegetables, and canned fruits. We find in this catalogue that "Spanish peppers" are under a heading by themselves, following capers, and imported prepared mustard. We also see in the same catalogue that Belgian pease and celery stalks are under a separate and distinct head, following French vegetables of different kinds, and preceding truffles. All of which, in the estimation of the board, tends to show that very little reliance can be placed on the fact that certain things are catalogued in a certain way.

Witness Porges, connected with Strohmeyer & Arpe Co., large importers of food products, said he had sold Spanish red peppers for 15 years and had seen them prepared in Spain. Like all the other witnesses, he stated they are used for garnishing. He said:

> We never class them as vegetables; always class them as Spanish peppers. Do not class them as vegetables for the reason they are not used as vegetables. I understand a vegetable is an article which can be eaten as a side dish.

He further states, "I do not know what the trade regards them as."

It may be stated that many things not vegetables can be eaten as side dishes. His definition is entirely inadequate and unsatisfactory, and fails to show any separate or peculiar or distorted meaning of the term "vegetables" throughout the trade.

Witness Schwiers, connected with the firm of Neuman & Schwiers Co., importers of fancy groceries, stated that red peppers are used for garnishing purposes and serve no other purpose; have never been sold as a vegetable, and not known in the trade as a vegetable; always sold for garnishing purposes; used, for instance, for garnishing sandwiches; not too strong to eat, having peculiar, sweetish, pungent taste; are consumed to quite a large extent. His exact language was:

> They are edible; I have eaten them. There is quite a large consumption of them.

It is difficult to reconcile the testimony of this witness. His statements seem contradictory. He says these peppers are used for garnishing; also that they are used in making sandwiches. He did not explain how they garnished the sandwich. He was asked, however, if the pepper was taken out when the sandwich was eaten, and he said:

> No; they are eaten with the sandwich; give the sandwich a nice——

Here he was interrupted. If not interrupted, he would probably have said that they gave the sandwich a nice flavor or taste. He further said the pepper was put on the inside of the sandwich.

The above is practically all the testimony we find in the record to establish the points necessary for the importers to establish in order to maintain their case. As said by the court in the capers case, Austin *v.* United States (4 Ct. Cust. Appls., 261; T. D. 33483), *supra*—

> It is clear that many articles belonging to well-known classes may, nevertheless, always pass in trade under more specific names, but this fact alone would not necessarily withdraw them for tariff purposes from the larger class to which the species may belong. * * * While the capers in question are invariably called capers, nevertheless they possess certain qualities and characteristics which bring them within the class of pickles.

So we say that while the commodity now before the board is called Spanish peppers, or sweet peppers, it possesses certain qualities and characteristics which bring it within the class of vegetables. We think the testimony shows that it is used as a vegetable; it is eaten and is used in connection with culinary preparations of food. There seems to be nothing in the statute which would indicate that Congress intended the word "vegetables" to be used in a commercial sense as distinguished from the ordinary and customary meaning of the word. We are of the opinion that the exclusion claimed by the importers is not shown to be sufficiently definite, uniform, and general throughout the trade in the United States. It is our opinion

this commodity should be classified as a vegetable. It is very similar in all respects, except perhaps the fiery taste, to the pepper grown in the United States. It has been prepared by an elaborate manipulation and handling. It is, therefore, dutiable, as assessed, as a prepared vegetable. The protests are overruled.

(T. D. 34668.)

Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, Somerville, and Hay.

BEFORE BOARD 1, JULY 20, 1914.

No. 86146.—SUFFICIENCY OF PROTEST.—Protest 728078 of George Kleine (New York).

SULLIVAN, *General Appraiser:* The merchandise is described on the invoice as "negative plates," and is stated by the appraiser in his answer to the protest to consist of "photographic plates fully developed." The appraiser also states:

As developed plates are not provided for in paragraph 474, they were returned for duty as a manufacture of glass n. s. p. f. at 45 per cent ad valorem under paragraph 109, act of 1909.

Against this assessment of duty the importer protested as follows:

CHICAGO, *November 28, 1913.*

DEAR SIR: On or about August 25, 1913, we imported from the Societa Anonima Ambrosio, through A. J. Coccaro, No. 1 Broadway, New York City, a consignment of photographic dry plates, the consignment having been entered at the port of New York and duty assessed at 25 per cent ad valorem, making the duty on the shipment $19.75. This was paid by Mr. Coccaro.

Later, however, and about the date of November 19, 1913, we received a notice from the Customs Service to the effect that a reappraisement of this merchandise brought it under a duty rate of 45 per cent ad valorem, and that we were indebted to the United States for an additional $15.80, which amount we remitted.

Upon investigation by ourselves we are convinced that an error has been made in the assessment of the duty on this shipment at 45 per cent, which would bring it under the heading of manufactures of glass and that a lesser duty should apply. We therefore wish to enter protest as provided for in paragraph M, page 82, of the tariff act of October 3, 1913, and inclose herewith our check for $1 for our entry of protest.

Yours, very truly,

GEORGE KLEINE,
Per F. C. McCARSTON.

COLLECTOR OF CUSTOMS,
Port of New York, New York, N. Y.

It will be observed that the question arises, Is this a sufficient protest under subsection 14, section 28, of the tariff act of 1909, to give this board jurisdiction to enter into the merits of the controversy? It seems to us unquestionably it is not a sufficient protest. It does not state any paragraph under which the merchandise should be classified, nor the rate. The mere statement therein "Upon investigation by ourselves we are convinced that an error has been made in the assessment of the duty on this shipment at 45 per cent, which would bring it under the heading of 'manufactures of glass,' and that a lesser duty should apply" is not such specific statement as required by the statute to be averred in a protest. It may be the better policy to be liberal in the construction of protests, but some attention should be paid to the clear wording of

the statute that the protest shall set forth "distinctly and specifically" the reasons for objections to the collector's decision as to the rate and amount of duties chargeable on the imported merchandise, or else it may as well be eliminated.

In Bowling Green Storage & Van Co. *v.* United States (3 Ct. Cust. Appls., 309; T. D. 32588) the court held that where an importer states with specificness the objection, he is limited to such and can not recover under other paragraphs of the statute, notwithstanding the merchandise may be the same.

The board may pass only on the allegations in the protest regardless of its merits. The protest must be specific; and the general appraisers can not go outside of the protest. *In re* Solvay (134 Fed., 678; T. D. 26039); Hormann *v.* Robertson (152 U. S., 521); Presson *v.* United States (152 U. S., 577); United States *v.* Curley (66 Fed., 720).

The Federal courts, when they had jurisdiction of these questions, always held that the statute required the protest to specifically state the claim of the protestant.

In United States *v.* Knowles (126 Fed., 737; T. D. 24922), decided by the Circuit Court of Appeals for the Third Circuit, the court held that a protest is not sufficient which claims the merchandise is free of duty under a certain paragraph of the tariff act, though as a matter of fact it is free of duty under another paragraph of the free list of the same act, to which the attention of the collector was not called in the protest.

We have no hesitancy in holding that this protest is insufficient. It is dismissed and the action of the collector affirmed.

No. 36147.—Imitation Precious Stones.—Protest 641438 of P. C. Kuyper & Co. (New York). Opinion by Sullivan, G. A.

Imitation precious stones pierced with two holes, to be sewn on wearing apparel, were held properly classified as manufactures of paste under paragraph 109, tariff act of 1909, rather than as imitation precious stones (par. 449), as claimed. Abstract 26760 (T. D. 31912) followed.

No. 36148.—Jewelry.—Protests 394827, etc., of Bailey, Banks & Biddle Co. (Philadelphia). Opinion by Sullivan, G. A.

Silver lockets and real stone pendants, etc., were held dutiable at 60 per cent ad valorem under paragraph 448, tariff act of 1909, as claimed. Skirt clasps of silver and gun metal were held not to be jewelry within the meaning of Cohn *v.* United States (4 Ct. Cust. Appls., 378; T. D. 33536). Protests sustained in part.

No. 36149.—Millinery Ornaments.—Protests 481813, etc., of A. Bader Co. (New York). Opinion by Sullivan, G. A.

Rhinestone hatpins and hatpin tops of brass set with imitation precious stones were held commonly known as jewelry under the provisions of paragraph 448, tariff act of 1909. Cohn *v.* United States (4 Ct. Cust. Appls., 378; T. D. 33536) followed. Protests sustained in part.

No. 36150.—Beaded Articles—Toys.—Protest 657718 of Manhattan Bead Chain Co. (New York). Opinion by Sullivan, G. A.

Strings of beads of different colors, with clasps, classified as beaded articles under paragraph 421, tariff act of 1909, were claimed dutiable as toys (par. 431). Protest overruled.

No. 36151.—Compass Watch Charms.—Protest 702653 of Sussfeld, Lorsch & Co, (New York). Opinion by Sullivan, G. A.

Abstract 35167 (T. D. 34307) followed as to small compasses classified under paragraph 448, tariff act of 1909. Protest overruled.

No. 86152.—PROTESTS OVERRULED.—Protest 721108 of Emrich & Schorsch, and protests 731658, etc., of E. H. Fischer & Co. et al. (New York), and protests 706362, etc., of John Wanamaker et al. (Philadelphia and New York). Opinions by Sullivan, G. A.

Protests unsupported; overruled.

No. 86153.—ANGORA GOAT HAIR—WOOL.—Protest 733980 of Lorenzo Buttice (Jacksonville). Opinion by Brown, G. A.

Merchandise classified as Angora goat hair under paragraph 368, tariff act of 1909, by virtue of paragraph 310, tariff act of 1913, was found to be wool, free of duty under paragraph 650, tariff act of 1913.

No. 86154.—MERCUROUS PREPARATIONS—CORROSIVE SUBLIMATE.—Protest 741877 of Eastern Drug Co. (Boston). Opinion by Brown, G. A.

Mercurous chloride, corrosive sublimate, and other mercurial preparations put up in packages of more than 2½ pounds were held dutiable under paragraph 14, tariff act of 1913, as claimed. Protest overruled as to the portion in packages of 2½ pounds or less, classified under paragraph 17.

No. 86155.—COAL-TAR COLORS.—Protest 735241 of I. Levinstein & Co. (Boston). Opinion by Brown, G. A.

Merchandise classified as coal-tar colors under paragraph 20, tariff act of 1913, was found to be obtained from anthracene and held free of duty under paragraph 394, as claimed. Protest sustained in part.

No. 86156.—CALOMEL IN 1-POUND PACKAGES.—Protest 734783 of Thos. Meadows & Co. (New York). Opinion by Brown, G. A.

Calomel in 1-pound packages was held dutiable as a medicinal compound under paragraph 17, tariff act of 1913, as classified.

No. 86157.—HERRINGS, SALTED.—Protests 558714, etc., of L. Fried & Son (New York). Opinion by Brown, G. A.

Merchandise classified as fish in tins under paragraph 270, tariff act of 1909, was held dutiable as herrings, salted (par. 272).

BEFORE BOARD 2, JULY 20, 1914.

No. 86158.—ALUMINUM IN SHEETS—ALUMINUM CIRCLES.—Protest 730795 of Toledo Cooker Co. (Cleveland), and protests 730978, etc., of Guiterman, Rosenfeld & Co. (New York). Opinions by Fischer, G. A.

Aluminum circles classified as manufactures of metal under paragraph 167, tariff act of 1913, were claimed dutiable as aluminum in sheets (par. 143). Protest overruled. Universal Shipping Co. *v.* United States (4 Ct. Cust. Appls., 245; T. D. 33479) followed.

No. 86159.—CHAIN-MAKING MACHINES—MACHINE TOOLS.—Protests 599211, etc., of Massce & Co. (New York). Opinion by Fischer, G. A.

Jewelers' chain-making machines classified as manufactures of metal under paragraph 199, tariff act of 1909, were held dutiable as machine tools (par. 197). Protests overruled as to accessories, tools, or extra parts. G. A. 7559 (T. D. 34413) followed.

No. 86160.—LACE PINS, GOLD PLATED.—Protest 737491 of Pratt & Farmer Co. (New York). Opinion by Fisher, G. A.

Gold-plated lace pins classified as jewelry under paragraph 356, tariff act of 1913, were held dutiable as articles of metal, gold plated (par. 167), as claimed.

No. 36161.—PROTESTS OVERRULED.—Protest 740570-47391 of Wells, Fargo & Co. (Chicago), and protests 733511, etc., of L. Rubelli's Sons et al. (Philadelphia). Opinions by Fischer, G. A.

Protests unsupported; overruled.

No. 36162.—KNITTED SILK MUFFLERS, FRINGED.—Protests 685175, etc., of Hensel, Bruckmann & Lorbacher et al. (New York).

HOWELL, *General Appraiser:* The merchandise consists of knitted silk mufflers, which are trimmed at the ends with silk fringe. They were assessed for duty at the rate of 60 per cent ad valorem under paragraph 402, tariff act of 1909, the pertinent provision of which reads as follows:

402. Laces, * * * fringes, * * * and articles made wholly or in part of any of the foregoing, * * * and articles of wearing apparel of every description, including knit goods, made up or manufactured in whole or in part by the tailor, seamstress, or manufacturer; all of the foregoing composed of silk, * * * or of which silk is the component material of chief value, * * * sixty per centum ad valorem: *Provided*, That articles composed wholly or in chief value of any of the materials or goods dutiable under this paragraph shall pay not less than the rate of duty imposed upon such materials or goods by this section: * * *.

The importers claim that the goods are properly dutiable at the rate of 50 per cent ad valorem under paragraph 400 of said act, which paragraph reads as follows:

400. Handkerchiefs or mufflers composed wholly or in chief value of silk, finished or unfinished, if cut, not hemmed or hemmed only, shall pay 50 per centum advalorem; if such handkerchiefs or mufflers are hemstitched or imitation hemstitched, or revered, or have drawn threads, or are embroidered in any manner, whether with an initial letter, monogram, or otherwise, by hand or machinery, or are tamboured, appliquéd, or having tucking or insertion, 60 per centum ad valorem.

In Kaskel's case, Abstract 28475 (T. D. 32507), where a like contention was made as to merchandise of the same dutiable character, we said:

The importers contend that as the provision for silk mufflers is an *eo nomine* provision, it covers all kinds of mufflers made of silk. The rule is well established that an *eo nomine* provision for an article, without words of limitation or qualification, must prevail over words of a general description which might otherwise include the article. Chew Hing Lung *v.* Wise (176 U. S., 156; T. D. 21954) and the authorities there cited. It is equally well settled, however, that notwithstanding that an article is called by the same name as that used in the tariff provision it may be held to be excluded therefrom if it is apparent from the context or otherwise that the thing imported is not the article or sort of article referred to by the name or description used in the statute. Robertson *v.* Rosenthal (132 U. S., 460); Bredt *v.* United States (65 Fed., 496); Downing *v.* United States (141 Fed., 490; T. D. 26454).

In our opinion, the language used in paragraph 400 is not broad enough to include all silk mufflers, but is limited in its scope to such as are of the character of handkerchiefs. We think this is quite apparent from the specifications set forth in the paragraph fixing the rate of duty to be imposed according to the form and condition of the articles as imported, and none of which specifications can be applied to these knit mufflers before us. The specifications "if cut, not hemmed or hemmed only," or if "hemstitched or imitation hemstitched, or revered, or have drawn threads," or "embroidered, * * * tamboured, appliquéd, or having tucking or insertion," are applicable to articles of the character of handkerchiefs, and, we repeat, can have no application to articles like these here in controversy. These are knitted mufflers which fail to respond to any of the conditions mentioned in the paragraph. A comparison of paragraph 400 with the corresponding paragraph (388) of the act of 1897 is persuasive of the correctness of the view that the provision is limited to mufflers of the character of handkerchiefs.

Paragraph 388 provided that handkerchiefs or mufflers composed wholly or in part of silk should pay the same rate of duty as was imposed on goods in the piece of the same description, weight, and condition, and fixed a minimum rate of duty thereon at 50 per cent ad valorem. Manifestly the articles here in question would have been excluded from paragraph 388 because of the provision making the rate of duty the same as that imposed on goods in the piece of like description, etc., which only had application to *woven* silk fabrics. The provision now in force is a substantial reenact-

ment of paragraph 388, except that the duty is no longer regulated by the duty imposed on fabrics in the piece of the same description, weight, etc., as the handkerchiefs or mufflers, but the minimum rate of duty of 50 per cent ad valorem under the old law is now made an unconditional rate. There is no other substantial change in the provision and we do not think there is any indication here of an intention on the part of Congress to enlarge the scope of the provision.

On appeal to the Court of Customs Appeals the decision of the board was reversed (4 Ct. Cust. Appls., 38; T. D. 33264). The court said in part:

We have examined paragraph 400 with some care, and also the corresponding paragraph of the tariff act of 1897, and we can find nothing in either provision which at all justifies the conclusion that there was a congressional intention to limit the operation of paragraph 400 to woven articles or to mufflers of the character of handkerchiefs.

And again:

As they are admittedly composed of silk, finished, cut, and not hemmed, it would seem that if full effect is to be given to the intention of Congress as manifested by the language that it used, we must hold that the importation is dutiable at 50 per cent ad valorem under paragraph 400.

A petition for a rehearing of that case was denied, but the same question again came before the court in the case of Hensel *v.* United States (4 Ct. Cust. Appls., 486; T. D. 33914). In that case the court, after reviewing the questions raised and decided in the Kaskel case, *supra*, adds:

The Government now says that while it does not seek a reargument in this of what was decided in the Kaskel case, it nevertheless does desire to present certain phases thereof which it claims were not there considered. It states that the points it now desires to argue are:

1. The provision for mufflers "cut, * * * hemmed *only*," does not include mufflers that are fringed in addition to being cut and hemmed.
2. The provision for mufflers "cut, not hemmed," does not include mufflers that are overwhelmed and fringed in addition to being cut.
3. The provision for mufflers in paragraph 400 is governed by that in paragraph 402 for "articles made * * * in part of any of the foregoing" fringes of silk.
4. And is governed also by the provision in said paragraph 402 for "articles of wearing apparel of every description, including knit goods * * * composed of silk."
5. The articles are subject to the first proviso in said paragraph 402, prescribing—

"That articles composed * * * in chief value of any of the materials or goods dutiable under this paragraph shall pay not less than the rate of duty imposed upon such material or goods by this section."

Of the five points raised by the Government the court only discussed the one relating to the hemming and overwhelming of the mufflers, and concluded that the record in the case was not sufficiently complete as to what constitutes the overwhelming process to enable the court to say whether such process is or is not a hemming process. With respect to this question the court said in part:

If the overwhelming, whatever it is, is not hemming, then these are of course not hemmed, and a question might be made whether the tied-in silk threads were more than the mere finishing which the words "finished or unfinished" in the paragraph imply.

We think all this can and ought to be more fully explained by testimony, which, perhaps, would be expert or technical in its nature, and that it is fair neither to the court nor the importers to ask us to make a finding on so material a question upon the exhibits alone.

The Government has brought this case forward with a view to meeting the suggestion of the court. A fuller record has been made as to the overwhelming process, and the testimony in the case indicates very clearly that such process is merely one of finishing the ends of the mufflers so that they will not unravel.

In view of the testimony now adduced, the Assistant Attorney General, in his brief, states that the Government no longer contends that such process takes the mufflers out of the provisions of paragraph 400. But he argues that the presence of the fringe

is sufficient to exclude the articles from said paragraph. This view was specifically urged in the Hensel case, *supra*, but was not adopted by the court. The exhibits in that case, like those before us now, were fringed, and as the court held they were not excluded from paragraph 400 we see no reason for departing from that ruling here. The record here does not show any different state of facts with respect to this contention, and the issue of law has already been decided by the court in the cases cited, *supra*.

A further argument is advanced by the Assistant Attorney General that mufflers like those represented by Exhibit N are to be excluded from paragraph 400, for the reason that they are not "cut." The mufflers represented by Exhibit N, it is stipulated, are separated from the long lengths in which they are knitted by the cutting at one edge of the fabric of the cotton separating thread, in order that it may be pulled out, and at the other edge of the fabric the cutting of the silk yarn of which the mufflers are composed at the point where it remains as a single strand connecting the two mufflers.

In the Hensel case, *supra*, the court said:

> This paragraph relates to mufflers composed wholly or in chief value of silk, whether finished or unfinished, and one would naturally expect to find therein such provisions as would enable all such mufflers to be classified thereunder. It would seem that the provision "not hemmed or hemmed only," in connection with what precedes and what follows, was intended to mean that all mufflers wholly or in chief value of silk that were not treated as provided in the last part of the paragraph, which treatment, as we understand the common meaning of the language there employed, is essentially a process of ornamentation applied to the fabric itself, would be dutiable under the first part at 50 per cent ad valorem. All varieties of the silk-muffler industry would, at first blush, seem to be provided for in the paragraph.

In view of this ruling we think all of the mufflers here in question are properly dutiable under paragraph 400 at the rate of 50 per cent ad valorem, and that claim in the protests is sustained. The decision of the collector is modified accordingly in each case.

No. 36163.—Fancy Figures—Favors—Toys.—Protest 688275 of Strobel & Wilken Co. (Philadelphia). Opinion by Howell, G. A.

A diminutive figure of a child, in fancy costume trimmed with Lever lace, mounted upon a cylindrical paper box which forms a receptacle for holding a few candies or bonbons, used for favors, table decorations, and similar purposes at social functions, classified under paragraph 350, tariff act of 1909, was claimed dutiable as a toy (par. 431). Protest overruled. Illfelder *v.* United States (1 Ct. Cust. Appls., 109; T. D. 31115) followed.

No. 36164.—Handkerchiefs in Part of Lever Lace.—Protest 725190–45305 of Marshall Field & Co. (Chicago). Opinion by Howell, G. A.

Handkerchiefs trimmed with Lever lace were held dutiable under the specific provision in paragraph 349, tariff act of 1909, for "handkerchiefs * * * made wholly or in part of lace," rather than under paragraph 350, as classified. Altman *v.* United States (5 Ct. Cust. Appls., —; T. D. 34251) followed.

No. 36165.—Raffia Ornaments and Trimmings.—Protests 519364–38559, etc., of Gage Bros. & Co. (Chicago). Opinion by Howell, G. A.

Trimmings and ornaments composed in chief value of raffia, derived from the leaves of certain palm trees, classified as vegetable fiber under paragraph 349, tariff act of 1909, were held dutiable as manufactures of palm leaf (par. 463). G. A. 7469 (T. D. 33510) followed. Protests sustained in part.

BEFORE BOARD 3, JULY 20, 1914.

No. 36166.—STRING BEANS IN BRINE—VEGETABLES.—Protest 710051-44866 of De Boer & Dik (Chicago). Opinion by Waite, G. A.

String beans apparently quite young when gathered, shredded, placed in barrels, and salt put over them, classified as beans prepared or preserved under paragraph 251, tariff act of 1909, were claimed dutiable as vegetables cut, sliced, or otherwise reduced in size, packed in salt, under paragraph 252. Protest sustained. Abstract 21995 (T. D. 30069) followed.

No. 36167.—DURESS.—Protests 622057, etc., of Overland Freight Transfer Co. (San Francisco). Opinion by Waite, G. A.

Protests overruled claiming duress. Van Ingen *v.* United States (4 Ct. Cust. Appls., 320; T. D. 33520) and Colonial Import & Export Co. *v.* United States (5 Ct. Cust. Appls., —; T. D. 34190) noted.

No. 36168.—PROTESTS OVERRULED.—Protests 720420, etc., of Asia Co. et al. (Los Angeles), and protests 688007, etc., of B. R. Anderson & Co. et al. (Port Townsend). Opinions by Waite, G. A.

Protests unsupported; overruled.

No. 36169.—WASTE RUBBER—INDIA RUBBER, CRUDE.—Protest 684583 of B. R. Lawrence (Detroit). Opinion by Somerville, G. A.

Magee *v.* United States (4 Ct. Cust. Appls., 443; T. D. 33874) followed as to scrap rubber held entitled to free entry as india rubber, crude, under paragraph 591, tariff act of 1909.

No. 36170.—WEIGHT OF PYROXYLIN.—Protest 696975 of Strobel & Wilken Co. (New York). Opinion by Somerville, G. A.

Protest sustained claiming that duty was assessed on excessive weight of pyroxylin.

No. 36171.—JUTE BAGGING—WASTE.—Protests 726966, etc., of Espy Cotton Co. et al. (Savannah). Opinion by Somerville, G. A.

Old jute bagging classified as waste not specially provided for under paragraph 384, tariff act of 1913, was held entitled to free entry as waste suitable for the manufacture of paper (par. 408).

No. 36172.—SHORTAGE.—Protest 729502 of B. Illfelder & Co. (Philadelphia). Opinion by Somerville, G. A.

Protest sustained claiming shortage.

No. 36173.—PROTESTS OVERRULED.—Protest 729529 of Alexander Murphy & Co. (Philadelphia). Opinion by Somerville, G. A.

Protest unsupported; overruled.

No. 36174.—AMERICAN GOODS RETURNED.—Protest 738151 of Pitt & Scott (New York), and protest 699317 of A. Sparman (San Francisco). Opinions by Hay, G. A.

The customs regulations not having been complied with, protests overruled claiming free entry for American goods returned under paragraph 500, tariff act of 1909.

No. 36175.—PROTESTS OVERRULED.—Protests 643623, etc., of W. M. Stone & Co. (Newport News). Opinion by Hay, G. A.

Protests unsupported; overruled.

No. 36176.—PROTESTS DISMISSED.—Protests 741866, etc., of J. Anderson & Co. et al. (New York.). Opinion by Hay, G. A.

Protests dismissed upon stipulation of counsel.

No. 36177.—PROTEST ABANDONED.—Protest 486291 of Guy G. Major (Toledo).

Protest abandoned.

BEFORE BOARD 1, JULY 22, 1914.

No. 36178.—GLASS LAMP SHADES AND CHIMNEYS.—Protests 630969, etc., of Fensterer & Ruhe et al. (New York and Baltimore). Opinion by Sullivan, G. A.

Glass lamp shades and chimneys used for Welsbach lights, classified under paragraph 98, tariff act of 1909, were claimed dutiable as manufactures of glass (par. 109). Protests overruled, the board finding the articles to be glass blown either in a mold or otherwise.

No. 36179.—BEADED BAGS.—Protests 668174–42980, etc., of Sears, Roebuck & Co. (Chicago). Opinion by Sullivan, G. A.

Bags composed of beads, cotton, and metal, classified under paragraph 421, tariff act of 1909, found to be in chief value of metal, were held dutiable under paragraph 199, as claimed. G. A. 7193 (T. D. 31428) followed. Protests sustained in part.

No. 36180. — CREOLIN-PEARSON — COAL-TAR PRODUCT — SHEEP DIP. — Protests 516044, etc., of Merck & Co. (New York). Opinion by Brown, G. A.

Creolin-Pearson, classified as a coal-tar product under paragraph 15, tariff act of 1909, was claimed free of duty as sheep dip (par. 669). Protests overruled. G. A. 7497 (T. D. 33775) cited.

No. 36181.—KAMABOKO—FISH BREAD.—Protest 686731 of Japanese American Commission Co. (Port Townsend). Opinion by Brown, G. A.

Protest overruled as to Kamaboko classified as fish in tins under paragraph 270, tariff act of 1909. Abstract 35610 (T. D. 34459) followed.

No. 36182.—MATTING RUGS.—Protest 711037 of H. H. Young (Tampa). Opinion by Brown, G. A.

Short strips of matting sewed together to form a square, classified as straw matting under paragraph 343, tariff act of 1909, were claimed dutiable as manufactures of straw (par. 463). Protest sustained. Abstract 25327 (T. D. 31498) and Abstract 25688 (T. D. 31624) followed.

No. 36183.—GUM ARABIC—MAGNESIA CALCINED.—Protest 727941 of J. J. Font & Co. (San Juan). Opinion by Brown, G. A.

Protest overruled as to gum arabic and magnesia calcined, classified as medicinal compounds under paragraph 17, tariff act of 1913.

No. 36184.—GLOVES, LADIES' GOLF—FABRIC GLOVES.—Protest 742471 of G. W. Sheldon & Co. (New York). Opinion by Brown, G. A.

Protest overruled as to ladies' golf gloves classified as wool wearing apparel under paragraph 382, tariff act of 1909, and fabric gloves composed of silk and cotton, silk chief value, classified under paragraph 317, tariff act of 1913.

No. 36185.—PROTESTS OVERRULED.—Protest 734031 of Ponterey & Cresci et al. (New York). Opinion by Brown, G. A.

Protest unsupported; overruled.

BEFORE BOARD 2, JULY 22, 1914.

No. 36186.—IMITATION HORSEHAIR HATS.—Protests 283238, etc., of R. L. Cochran Co. (New York). Opinion by Howell, G. A.

On the authority of Thomass *v.* United States (1 Ct. Cust. Appls., 86; T. D. 31107) and United States *v.* Cochran (3 Ct. Cust. Appls., 57; T. D. 32349) imitation horsehair hats were held dutiable by similitude as cotton wearing apparel under paragraph 314, tariff act of 1897. Protests sustained in part.

No. 36187.—LACE ORNAMENTS—BUTTONS.—Protest 729478 of Joel-Bailey-Davis Co. (Philadelphia). Opinion by Howell, G. A.

Merchandise classified as articles and ornaments of crocheted cotton lace under paragraph 349, tariff act of 1909, was claimed dutiable as buttons (par. 427). Protest overruled. United States *v.* Sheldon (5 Ct. Cust. Appls., —; T. D. 34555) cited.

No. 36188.—PROTESTS OVERRULED.—Protests 737466, etc., of Galland, Wechmar & Co. et al. (New York). Opinion by Howell, G. A.

Protests unsupported; overruled.

BEFORE BOARD 3, JULY 22, 1914.

No. 36189.—OLIVES IN OLIVE OIL.—Protest 726927 of Sahadi Bros. (New York).

WAITE, *General Appraiser:* The question raised by this protest is the proper assessment of four barrels of olives in olive oil. The importers claim they should be dutiable as olives under paragraph 275, tariff act of 1909.

The appraiser states in his special report that the olives were returned for duty separately at 15 cents per gallon under paragraph 275 and the olive oil at 40 cents per gallon under paragraph 38. The report of the gauger is as follows:

4 barrels olives. Comes out olives in oil:

Capacity	211½
Outs	9½
Net gallons	202

It appears, however, from an inspection of the liquidation indorsed upon the face of the entry that this importation has been assessed at 40 cents per gallon on the 202 net gallons, therefore treating the whole contents of the barrels as olive oil.

It appears from a report from the surveyor's office regarding this shipment that one barrel of the importation was gauged at the importers' place of business, and was found to contain, in addition to olives, 8½ gallons of liquid, which we think was olive oil, judging from the record as a whole. Oil is an unusual medium in which to import olives. Ordinarily olives in bulk are imported in brine. Hence we conclude that whatever olive oil in its natural condition was imported should pay duty as such. It is evident that the olive oil would have a tendency to increase the apparent bulk of the olives in the barrel. No testimony has been given, however, upon this point. We have nothing upon which to base the quantity of olives except the report of the gauger, which seems to have been made on the basis of the full contents of the barrel—olives and olive oil. It is possible the importer may be wronged somewhat in this decision, but it was within his power, and it was his duty, to show the actual amount of olives, which he has failed to do.

Our holding is that duty should be assessed on 202 gallons of olives at 15 cents per gallon, and the olive oil found in the four barrels based upon the gauging of the one barrel, to wit, 34 gallons, at 40 cents per gallon. Reliquidation is ordered accordingly. Note Abstract 31641 (T. D. 33263).

No. 36190.—Bean Cake.—Protests 719128, etc., of North American Mercantile Co. et al. (San Francisco). Opinion by Waite, G. A.

Protests overruled as to bean cake classified under paragraph 252, tariff act of 1909. Abstract 29577 (T. D. 32780) followed.

No. 36191.—Weight of Cheese.—Protests 707191, etc., of American Shipping Co. (New York). Opinion by Waite, G. A.

Protests overruled as to weight of cheese. Abstract 33653 (T. D. 33763) and Abstract 34977 (T. D. 34247) followed.

No. 36192.—Protests Overruled.—Protests 695316, etc., of M. Furuya Co. et al. (Port Townsend). Opinion by Waite, G. A.

Protests unsupported; overruled.

No. 36193.—Cork Waste.—Protests 721056, etc., of Nairn Linoleum Co. (New York). Opinion by Somerville, G. A.

On the authority of G. A. 7541 (T. D. 34276) cork waste classified under paragraph 479, tariff act of 1909, was held free of duty under paragraph 547.

No. 36194.—Wood Pulp—Canadian Reciprocity.—Protest 659111 of Union Paper & Twine Co. (Cleveland), and protests 585571, etc., and 616606 of F. B. Vandegrift & Co. (New York). Opinions by Somerville, G. A.

American Express Co. *v.* United States (4 Ct. Cust. Appls., 146; T. D. 33434) followed as to wood pulp and paper.

No. 36195.—Wooden Stands.—Protests 697621, etc., of A. A. Vantine & Co. et al. (New York). Opinion by Hay, G. A.

Abstract 33976 (T. D. 33833) and Abstract 34727 (T. D. 34165) followed as to wooden stands claimed dutiable as manufactures of wood under paragraph 215, tariff act of 1909. Protests sustained in part.

No. 36196.—American Goods Returned.—Scrap Tin.—Protest 708673 of Wm. A. Bird (Buffalo). Opinion by Hay, G. A.

G. A. 7586 (T. D. 34650) followed as to scrap tin claimed entitled to free entry as American goods returned under paragraph 500, tariff act of 1909.

No. 36197.—Protest Filed Too Late.—Protest 725597 of Continental Paper Bag Co. (Boston). Opinion by Hay, G. A.

Protest filed too late; dismissed.

Decisions on Applications for Rehearing.

No. 36198.—Rehearing Denied.—Application by the Government for rehearing in protests 632763, etc., of Strawbridge & Clothier (Philadelphia), Abstract 35120 (T. D. 34307). No. 742. Before Board 1, June 23, 1914.

No. 36199.—Rehearing Denied.—Application by the Government for rehearing in protests 657640, etc., of American Bead Co. (New York), Abstract 35288 (T. D. 34355). No. 750. Before Board 1, June 23, 1914.

No. 36200.—Rehearing Denied.—Application by the Government for rehearing in protest 693581-44322 of International Forwarding Co. (Chicago), Abstract 35337 (T. D. 34378). No. 756. Before Board 1, June 23, 1914.

No. 86201.—REHEARING DENIED.—Application by the Government for rehearing in protests 486660, etc., of Strawbridge & Clothier (Philadelphia), Abstract 35405 (T. D. 34416). No. 760. Before Board 1, June 23, 1914.

No. 86202.—REHEARING DENIED.—Application by the Government for rehearing in protests 690388, etc., of Rattan & Cane Co. (New York), Abstract 35394 (T. D. 34398). No. 761. Before Board 1, June 23, 1914.

No. 86203.—REHEARING DENIED.—Application by the Government for rehearing in protests 551219, etc., of American Bead Co. (New York), Abstract 35438 (T. D. 34416). No. 763. Before Board 1, June 23, 1914.

No. 86204.—REHEARING DENIED.—Application by the Government for rehearing in protest 726585 of Rosenthal & Grotta (New York), Abstract 35744 (T. D. 34496). No. 773. Before Board 1, July 21, 1914.

No. 86205.—REHEARING DENIED.—Application by the protestants for rehearing in protest 696758 of Brown & Roese (New York), Abstract 35832 (T. D. 34548). No. 778. Before Board 3, July 21, 1914.

No. 86206.—REHEARING GRANTED—BEADS.—Application by the Government for rehearing in protest 545317-38313 of Lebolt & Co. (Chicago), Abstract 35939 (T. D. 34571). No. 780. Before Board 1, July 21, 1914.

(T. D. 34669.)

Free entry of domestic products—Compliance with provisions of articles 570 to 572 waived in certain cases.

Collectors authorized to waive compliance with the provisions of articles 570 to 572 of the Customs Regulations of 1908 where the domestic products returned, upon which no drawback has been allowed, are provided for in the free list of the tariff act of 1913.—T. D. 34409 of April 24, 1914, modified accordingly.

TREASURY DEPARTMENT, *July 29, 1914.*

SIR: Referring to T. D. 34409 of April 24, 1914, authorizing you to waive compliance with the provisions of articles 570 to 572 of the Customs Regulations of 1908, and to admit free of duty domestic products returned where they are of a character which, if of foreign production, would be entitled to free entry, I have to advise you that the department is in receipt of a letter from which it appears that a question has arisen whether the Treasury decision referred to should be construed as authorizing the free entry of American goods even though upon the exportation thereof drawback had been allowed.

To the end that there may be no uncertainty as to the scope of T. D. 34409, I deem it proper to state that the decision is limited to American goods upon which no drawback was allowed. As to American products upon which drawback has been allowed, duty equal to the drawback paid should be collected. If, therefore, you have evidence in your possession that merchandise imported at your port and entered free of duty under one of the paragraphs of the free

list of the tariff act is of domestic origin and is of a class of merchandise on which drawback is allowed, duty should be collected equal to the drawback allowed on such merchandise, unless a certificate of exportation provided by article 572 of the Customs Regulations is submitted, showing that no drawback has in fact been paid.

Respectfully, WM. P. MALBURN,
(101938.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Philadelphia, Pa.*

(T. D. 34670.)

Printed cloth for children's pinafores.

Appeal directed from decision of the Board of United States General Appraisers of June 17, 1914, Abstract 35927 (T. D. 34571), involving the classification of cotton cloth printed with designs suitable for making children's pinafores.

TREASURY DEPARTMENT, *July 30, 1914.*

SIR: I have to acknowledge the receipt of your letter of the 25th instant, inviting attention to the decision of the Board of United States General Appraisers of the 17th ultimo, Abstract 35927 (T. D. 34571), wherein it was held that certain merchandise consisting of cotton cloth printed with designs suitable for making children's pinafores or aprons and cut into lengths was properly dutiable as toys or parts of toys at the rate of 35 per cent ad valorem under paragraph 431 of the tariff act of 1909.

In view of the importance of the issue, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, WM. P. MALBURN,
(102479.) *Assistant Secretary.*
ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 34671.)

Common carrier.

Approving new bond of the American-Hawaiian Steamship Co. as a common carrier for the transportation of dutiable merchandise in bond and for the lading and unlading of bonded goods under the act of February 13, 1911.

TREASURY DEPARTMENT, *August 1, 1914.*

SIR: The department is in receipt of your letter of the 27th ultimo, with which was inclosed a bond, in duplicate, of the American-Hawaiian Steamship Co. for the transportation of merchandise in bond

under sections 3000, 3001, 3005, and 3006 of the Revised Statutes, the act of June 10, 1880, and all acts relating thereto govering the transportation of imported merchandise without appraisement, and the provisions of the act of February 13, 1911, relating to the lading and unlading of bonded goods, said bond being in lieu of that of the company named approved August 5, 1908 (T. D. 29194).

The bond is approved and one copy thereof is herewith inclosed to be placed upon your files. You should note the fact and date of the rebonding of the company upon the copy of the bond approved, as above stated, August 5, 1908, now in your possession, and retain the same without cancellation to meet any liability which may have accrued thereunder.

Respectfully, WM. P. MALBURN,
(58067.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34672.)

Coffee—Porto Rico.

Porto Rican coffee exported and returned to Porto Rico and foreign coffee imported into Porto Rico free of duty under act of October 3, 1913.

TREASURY DEPARTMENT, *August 3, 1914.*

SIR: The department refers to your letter of May 1 last and previous correspondence relating to the dutiable classification of Porto Rican coffee exported and returned and also of coffee of foreign growth imported into Porto Rico, in view of the first provisos to sections 2 and 3 of the act of April 12, 1900.

The question was submitted to the Attorney General for an opinion, and in his opinion, dated the 30th ultimo, hereto attached, it is held that Porto Rican coffee exported and returned and foreign coffee imported into Porto Rico are free of duty under the tariff act of October 3, 1913.

Respectfully, WM. P. MALBURN,
(63070.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *San Juan, P. R.*

DEPARTMENT OF JUSTICE,
Washington, July 30, 1914.

SIR: I have the honor to acknowledge the receipt of your communication of June 8, 1914, in which you ask for an expression of my opinion on the question whether the provisions of the act of April 12, 1900, sections 2 and 3 (31 Stat., 77), are still in force with reference to the importation of coffee into Porto Rico.

The pertinent portion of the sections stated by you are as follows:

SEC. 2. That on and after the passage of this act the same tariffs, customs, and duties shall be levied, collected, and paid upon all articles imported into Porto Rico from ports other than those of the United States which are required by law to be collected upon articles imported into the United States from foreign countries: *Provided*, That

on all coffee in the bean or ground imported into Porto Rico there shall be levied and collected a duty of 5 cents per pound, any law or part of law to the contrary notwithstanding. * * *

SEC. 3. * * * That on and after the date when this act shall take effect all merchandise and articles, except coffee, not dutiable under the tariff laws of the United States, and all merchandise and articles entered in Porto Rico free of duty under orders heretofore made by the Secretary of War, shall be admitted into the several ports thereof, when imported from the United States, free of duty, all laws or parts of laws to the contrary notwithstanding; and whenever the Legislative Assembly of Porto Rico shall have enacted and put into operation a system of local taxation to meet the necessities of the government of Porto Rico, by this act established, and shall by resolution duly passed so notify the President, he shall make proclamation thereof, and thereupon all tariff duties on merchandise and articles going into Porto Rico from the United States or coming into the United States from Porto Rico shall cease, and from and after such date all such merchandise and articles shall be entered at the several ports of entry free of duty; and in no event shall any duties be collected after the 1st day of March, 1902, on merchandise and articles going into Porto Rico from the United States or coming into the United States from Porto Rico.

With reference to the importation of coffee into Porto Rico from the United States, I am of the opinion that under the proclamation of the President dated July 25, 1901, and under the express provisions of section 3—

That in no event shall any duties be collected after the 1st day of March, 1902, on merchandise and articles going into Porto Rico from the United States—

no duty can now be collected upon coffee. See also Jordan *v.* Roche (1913) (228 U. S., 436, pp. 440, 441).

With reference to the importation of coffee into Porto Rico from countries other than the United States, while it appears that section 2 of the above act has never been repealed in express terms, yet the general tariff acts of 1909 and 1913 contain sections repealing "all acts and parts of acts inconsistent" with the provisions of each, respectively.

At the date of the passage of the special Porto Rico act of 1902 the importation of coffee into the United States was governed by the tariff act of 1897 (30 Stat., 194, c. 11, sec. 2, item 529), under which coffee was exempt from duty. The Porto Rico act imposing a duty of 5 cents per pound was, therefore, a special act excepting imports of coffee into Porto Rico from the general law.

The question arises whether there is such an "irreconcilable conflict" between the special act and the later general tariff acts that the two can not exist together, under the doctrines laid down in *Ex parte* Crow Dog (109 U. S., 556, pp. 570, 571) (1883); Rodgers *v.* United States (185 U. S., 83, pp. 88, 89, 92) (1902); United States *v.* Nix (189 U. S. 199, 209) (1903); Petri *v.* F. E. Creelman Lumber Co. (199 U. S., 487, pp. 497, 498) (1905); *Ex parte* United States (226 U. S., 420, p. 424) (1913), and 21, pp. 338, 339 (1896).

The tariff act of 1909 (36 Stat., 71, c. 6, sec. 1) provided as follows:

Free list.

That on and after the day following the passage of this act, except as otherwise specially provided for in this act, the articles mentioned in the following paragraphs shall, when imported into the United States or into any of its possessions (except the Philippine Islands and the islands of Guam and Tutuila), be exempt from duty—

and item 541 under the free list enumerated "coffee."

The tariff act of 1913 (63d Cong., sess. 1, c. 16, sec. 1, p. 152) contained exactly the same provision as the act of 1909 with reference to the free list and included therein "item 457—coffee."

The specific exception in these statutes of importations into those "possessions" of the United States known as the Philippine Islands and the islands of Guam and Tutuila is evidence that the attention of Congress was expressly drawn to the subject of importations into all of the "possessions" of the United States, and that by

making exceptions in three specific cases it evinced its intention to make none in the case of "any of its possessions" other than those so enumerated. The legislative history of the act further shows that express attention to the subject of "possessions" was given by Congress; for in the draft of the bill as it passed the House of Representatives, the only "possession" excepted was "the Philippine Islands," whereas in the bill as it passed the Senate "the islands of Guam and Tutuila" were added to the excepted "possessions." (House Doc. No. 92, 61st Cong., 1st sess.)

Porto Rico is clearly a "possession" of the United States. American R. R. Co. of Porto Rico *v.* Birch (1912) (224 U. S., 547, p. 555); American R. R. Co. of Porto Rico *v.* Didricksen (227 U. S., 145, 148) (1913).

See Kopel *v.* Bingham (1909) (211 U. S., 468) and Martinez *v.* Association de Senoras (1909) (213 U. S., 20).

From its character as a "possession," therefore, it follows that importations into Porto Rico, not being specially excepted by the tariff acts of 1909 and 1913, were to be governed by the general provisions of the free list. *Expressio unius est exclusion alterius.* United States *v.* Arredondo (6 Pet., 691, p. 725) (1832); Kendall *v.* United States (107 U. S., 123, p. 125) (1882).

Answering your question, therefore, I am of the opinion that so much of the provisions of sections 2 and 3 of the act of April 12, 1900, as refers to the importation of coffee into Porto Rico was repealed by the tariff act of 1909 (c. 6, 36 Stat., 71) and is no longer in force, and that the provisions of the tariff act of 1913 (c. 16), including coffee upon the free list, are applicable to its importation into Porto Rico.

Respectfully,

J. C. McReynolds, *Attorney General.*

The Secretary of the Treasury.

(T. D. 34673.)

Common carrier.

Discontinuance of the bond of the Insular Line as a common carrier for the transportation of dutiable merchandise and for the lading and unlading of bonded goods under the act of February 13, 1911.

Treasury Department, *August 4, 1914.*

Sir: The department has received your letter of the 30th ultimo, with which was inclosed an application of the Insular Line for the discontinuance of its bonded route for the transportation of merchandise in bond and for the lading and unlading of bonded goods under the act of February 13, 1911, said bond having been approved April 2, 1912 (T. D. 32437).

The discontinuance of the route is authorized upon the condition that all requirements of the regulations have been complied with on the part of the said Insular Line. The fact and date of the discontinuance should be noted on the copy of the bond on file in your office, which should be retained in your possession without cancellation to meet any liability which may have accrued thereunder.

Respectfully, Wm. P. Malburn,
(33696.) *Assistant Secretary.*

Collector of Customs, *New York.*

(T. D. 34674.)

Neutrality—Austria-Hungary and Servia, Germany and Russia, and Germany and France.

TREASURY DEPARTMENT, *August 5, 1914.*

To collectors and other officers of the customs:

The annexed proclamation of neutrality issued by the President is published for your information.

W. G. MCADOO, *Secretary.*

[NEUTRALITY—AUSTRIA-HUNGARY AND SERVIA, GERMANY AND RUSSIA, AND GERMANY AND FRANCE.]

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas a state of war unhappily exists between Austria-Hungary and Servia and between Germany and Russia and between Germany and France; And Whereas the United States is on terms of friendship and amity with the contending powers, and with the persons inhabiting their several dominions;

And Whereas there are citizens of the United States residing within the territories or dominions of each of the said belligerents and carrying on commerce, trade, or other business or pursuits therein;

And Whereas there are subjects of each of the said belligerents residing within the territory or jurisdiction of the United States, and carrying on commerce, trade, or other business or pursuits therein;

And Whereas the laws and treaties of the United States, without interfering with the free expression of opinion and sympathy, or with the commercial manufacture or sale of arms or munitions of war, nevertheless impose upon all persons who may be within their territory and jurisdiction the duty of an impartial neutrality during the existence of the contest;

And Whereas it is the duty of a neutral government not to permit or suffer the making of its waters subservient to the purposes of war;

Now, Therefore, I, WOODROW WILSON, President of the United States of America, in order to preserve the neutrality of the United States and of its citizens and of persons within its territory and jurisdiction, and to enforce its laws and treaties, and in order that all persons, being warned of the general tenor of the laws and treaties of the United States in this behalf, and of the law of nations, may thus be prevented from any violation of the same, do hereby declare and proclaim that by certain provisions of the act approved on the 4th day of March, A. D. 1909, commonly known as the "Penal Code of the United States" the following acts are forbidden to be done, under severe penalties, within the territory and jurisdiction of the United States, to-wit:—

1. Accepting and exercising a commission to serve either of the said belligerents by land or by sea against the other belligerent.

2. Enlisting or entering into the service of either of the said belligerents as a soldier, or as a marine, or seaman on board of any vessel of war, letter of marque, or privateer.

3. Hiring or retaining another person to enlist or enter himself in the service of either of the said belligerents as a soldier, or as a marine, or seaman on board of any vessel of war, letter of marque, or privateer.

4. Hiring another person to go beyond the limits or jurisdiction of the United States with intent to be enlisted as aforesaid.

5. Hiring another person to go beyond the limits of the United States with intent to be entered into service as aforesaid.

6. Retaining another person to go beyond the limits of the United States with intent to be enlisted as aforesaid.

7. Retaining another person to go beyond the limits of the United States with intent to be entered into service as aforesaid. (But the said act is not to be construed to extend to a citizen or subject of either belligerent who, being transiently within the United States, shall, on board of any vessel of war, which, at the time of its arrival within the United States, was fitted and equipped as such vessel of war, enlist or enter himself or hire or retain another subject or citizen of the same belligerent, who is transiently within the United States, to enlist or enter himself to serve such belligerent on board such vessel of war, if the United States shall then be at peace with such belligerent.)

8. Fitting out and arming, or attempting to fit out and arm, or procuring to be fitted out and armed, or knowingly being concerned in the furnishing, fitting out, or arming of any ship or vessel with intent that such ship or vessel shall be employed in the service of either of the said belligerents.

9. Issuing or delivering a commission within the territory or jurisdiction of the United States for any ship or vessel to the intent that she may be employed as aforesaid.

10. Increasing or augmenting, or procuring to be increased or augmented, or knowingly being concerned in increasing or augmenting, the force of any ship of war, cruiser, or other armed vessel, which at the time of her arrival within the United States was a ship of war, cruiser, or armed vessel in the service of either of the said belligerents, or belonging to the subjects of either, by adding to the number of guns of such vessels, or by changing those on board of her for guns of a larger calibre, or by the addition thereto of any equipment solely applicable to war.

11. Beginning or setting on foot or providing or preparing the means for any military expedition or enterprise to be carried on from the territory or jurisdiction of the United States against the territories or dominions of either of the said belligerents.

And I do hereby further declare and proclaim that any frequenting and use of the waters within the territorial jurisdiction of the United States by the armed vessels of a belligerent, whether public ships or privateers, for the purpose of preparing for hostile operations, or as posts of observation upon the ships of war or privateers or merchant vessels of a belligerent lying within or being about to enter the jurisdiction of the United States, must be regarded as unfriendly and offensive, and in violation of that neutrality which it is the determination of this government to observe; and to the end that the hazard and inconvenience of such apprehended practices may be avoided, I further proclaim and declare that from and after the fifth day of August instant, and during the continuance of the present hostilities between Austria-Hungary and Servia, and Germany and Russia and Germany and France, no ship of war or privateer of any belligerent shall be permitted to make use of any port, harbor, roadstead, or waters subject to the jurisdiction of the Unit d States from which a vessel of an opposing belligerent (whether the same shall be a ship of war, a privateer, or a merchant ship) shall have previously departed, until after the expiration of at least twenty-four hours from the departure of such last-mentioned vessel beyond the jurisdiction of the United States. If any ship of war or privateer of a belligerent shall, after the time this notification takes effect, enter any port, harbor, roadstead, or waters of the United States, such vessel shall be required to depart and to put to sea within twenty-four hours after her entrance into such port, harbor, roadstead, or waters, except in case of stress of weather or of her requiring provisions or things necessary for the subsistence of her crew, or for repairs; in any of which cases the authorities of the port or of the nearest port (as the case may be) shall require her to put to sea as soon as possible after the expiration of such period of twenty-four

hours, without permitting her to take in supplies beyond what may be necessary for her immediate use; and no such vessel which may have been permitted to remain within the waters of the United States for the purpose of repair shall continue within such port, harbor, roadstead, or waters for a longer period than twenty-four hours after her necessary repairs shall have been completed, unless within such twenty-four hours a vessel, whether ship of war, privateer, or merchant ship of an opposing belligerent, shall have departed therefrom, in which case the time limited for the departure of such ship of war or privateer shall be extended so far as may be necessary to secure an interval of not less than twenty-four hours between such departure and that of any ship of war, privateer, or merchant ship of an opposing belligerent which may have previously quit the same port, harbor, roadstead, or waters. No ship of war or privateer of a belligerent shall be detained in any port, harbor, roadstead, or waters of the United States more than twenty-four hours, by reason of the successive departures from such port, harbor, roadstead, or waters of more than one vessel of an opposing belligerent. But if there be several vessels of opposing belligerents in the same port, harbor, roadstead, or waters, the order of their departure therefrom shall be so arranged as to afford the opportunity of leaving alternately to the vessels of the opposing belligerents, and to cause the least detention consistent with the objects of this proclamation. No ship of war or privateer of a belligerent shall be permitted, while in any port, harbor, roadstead, or waters within the jurisdiction of the United States, to take in any supplies except provisions and such other things as may be requisite for the subsistence of her crew, and except so much coal only as may be sufficient to carry such vessel, if without any sail power, to the nearest port of her own country; or in case the vessel is rigged to go under sail, and may also be propelled by steam power, then with half the quantity of coal which she would be entitled to receive, if dependent upon steam alone, and no coal shall be again supplied to any such ship of war or privateer in the same or any other port, harbor, roadstead, or waters of the United States, without special permission, until after the expiration of three months from the time when such coal may have been last supplied to her within the waters of the United States, unless such ship of war or privateer shall, since last thus supplied, have entered a port of the government to which she belongs.

And I do further declare and proclaim that the statutes and the treaties of the United States and the law of nations alike require that no person, within the territory and jurisdiction of the United States, shall take part, directly or indirectly, in the said wars, but shall remain at peace with all of the said belligerents, and shall maintain a strict and impartial neutrality.

And I do hereby enjoin all citizens of the United States, and all persons residing or being within the territory or jurisdiction of the United States, to observe the laws thereof, and to commit no act contrary to the provisions of the said statutes or treaties or in violation of the law of nations in that behalf.

And I do hereby warn all citizens of the United States, and all persons residing or being within its territory or jurisdiction that, while the free and full expression of sympathies in public and private is not restricted by the laws of the United States, military forces in aid of a belligerent cannot lawfully be originated or organized within its jurisdiction; and that, while all persons may lawfully and without restriction by reason of the aforesaid state of war manufacture and sell within the United States arms and munitions of war, and other articles ordinarily known as "contraband of war," yet they cannot carry such articles upon the high seas for the use or service of a belligerent, nor can they transport soldiers and officers of a belligerent, or attempt to break any blockade which may be lawfully established and maintained during the said wars without incurring the risk of hostile capture and the penalties denounced by the law of nations in that behalf.

And I do hereby give notice that all citizens of the United States and others who may claim the protection of this government, who may misconduct themselves in

the premises, will do so at their peril, and that they can in no wise obtain any protection from the government of the United States against the consequences of their misconduct.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE at the city of Washington this fourth day of August in the year of our Lord one thousand nine hundred and fourteen and of the independence of the United States of America the one hundred and thirty-ninth.

[SEAL.]

WOODROW WILSON.

By the President:
WILLIAM JENNINGS BRYAN,
Secretary of State.

[No. 1271.]

(T. D. 34675—G. A. 7591.)

Steel window sashes and frames.

Window sashes and frames composed entirely of steel, notwithstanding they have permanently attached thereto gun-metal hinges and stay pins and brass bushings, are nevertheless properly classifiable as sashes and frames of steel under the *eo nomine* provision therefor in paragraph 104, tariff act of 1913, as claimed, rather than as manufactures of metal under paragraph 167 of said act, as assessed.

United States General Appraisers, New York, July 27, 1914.

In the matter of protest 730426 of J. J. Gavin & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers; COOPER, G. A., not participating).

FISCHER, *General Appraiser:* This protest covers an importation of 53 metal window sashes and frames, completely fitted for immediate use, requiring only the addition thereto of the glass windowpanes. They are constructed of steel throughout with the exception of the hinges and stay pins, which are of gun metal, and the bushings, which are of brass. Duty was levied thereon at 20 per cent ad valorem under paragraph 167 of the act of 1913, as manufactures of metal, and they are claimed to be properly dutiable at 10 per cent ad valorem under the following provision in paragraph 104 of said act:

* * * Sashes, frames, and building forms, together with all other structural shapes of iron or steel, whether plain, punched, or fitted for use, or whether assembled or manufactured, 10 per centum ad valorem.

The facts are undisputed, the sole question here at issue being one of law.

The contention of the Government is that, inasmuch as the proof clearly establishes that said articles are composed of 90 per cent steel and 10 per cent brass and gun metal, they are properly excluded from

the provisions of said paragraph 104, which, by its terms, is limited to sashes and frames composed wholly of iron or steel.

In Vantine *v.* United States (3 Ct. Cust. Appls., 488; T. D. 33124) the court said:

> The general rule appears to be well settled that when a tariff statute provides for duty upon an article of specified material, without declaring to what extent it must be composed of that material, it is at least confined to merchandise of which the specified material is that of chief value or is the predominant one therein.

This fundamental principle of customs law has been sustained in numerous cases, among which may be cited Arthur *v.* Butterfield (125 U. S., 70), *In re* Wise (93 Fed., 443), Drew *v.* Grinnell (115 U. S., 477), Schiff *v.* United States (99 Fed., 555), Robertson *v.* Edelhoff (91 Fed., 642), Worthington *v.* United States (86 Fed., 118), and Kenyon *v.* United States (4 Ct. Cust. Appls., 344; T. D. 33529).

It being fully conceded that the controverted articles are completely fitted window sashes and frames in chief value of steel, which largely predominates, and that the gun-metal hinges and stay pins and brass bushings are absolutely essential parts, without which the sashes would be utterly incapable of use, it follows as matter of law that said sashes and frames are properly classifiable for duty under the *eo nomine* provision therefor in said paragraph 104.

The protest is therefore sustained and the decision of the collector modified accordingly.

(T. D. 34676—G. A. 7592.)

Coverings.

COVERINGS—DISPLAY CASES FOR PIPES.

Show cases imported filled with pipes and intended to be refilled from time to time with other pipes are unusual articles or forms designed for use otherwise than in the bona fide transportation of the merchandise to the United States under subsection 18, section 28, act of 1909.—United States *v.* Hohner (4 Ct. Cust. Appls., 122; T. D. 33393) and Vantine & Co.'s case, G. A. 6710 (T. D. 28702), distinguished.

United States General Appraisers, New York, August 1, 1914.

In the matter of protests 727505, etc., of C. A. Clark against the assessment of duty by the collector of customs at the port of New York.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers; SOMERVILLE, G. A., not participating).

HAY, *General Appraiser:* The article which is the subject of this protest is a show case made of wood and glass. The case is approximately 4 inches deep by 1½ feet wide by 4 feet high, with a glazed door through which the entire contents of the case can be seen. It is made with a support in the back, so that it may be mounted on a

counter in a position varying slightly from vertical. The collector assessed the article in question as an unusual covering for pipes under subsection 18 of section 28 of the tariff act of 1909. The testimony shows that the show case in question is sometimes imported with pipes in it, sometimes without, and at other times with just one or two pipes therein to illustrate how the case is used. The particular case now before the board, however, was imported filled with pipes, a pipe being in each of the spaces in the case, as by its construction was intended. The testimony also shows that the case is neither sold nor given to the retail pipe dealer, but is loaned to him, the title remaining in the importer.

Since the decision of United States *v.* Park (152 Fed., 142; T. D. 27833) the administration of this provision of law by the collector and the decisions of the board have been uniform, and such coverings as respond to the provisions of that paragraph have been treated as liable to duty as a part of and at the rate of the merchandise which they contain, and also the additional duty applicable to them if imported empty. In Hohner's case, Abstract 29490 (T. D. 32760), this board held that the coverings in question were not designed for use other than in the bona fide transportation of the merchandise, the facts in that case disclosing that the harmonica cases in question were used to display the harmonicas for sale, but were then destroyed and not used for any other purpose. Upon that finding of fact the case was decided by the Court of Customs Appeals in United States *v.* Hohner (4 Ct. Cust. Appls., 122; T. D. 33393) and the decision of the board affirmed.

In the matter now before us the contention is made that the article is in no sense a covering, and hence should not be treated as such. The case differs in this respect from that of Vantine & Co., G. A. 6710 (T. D. 28702), in that the show case in the case at bar would seem from its appearance to be especially designed to hold the pipes that were shipped in it. It is also apparent that it is to be used as a show case over and over again; that when the pipes shipped in it are sold it is to be refilled with other pipes, and thus serve the use and purpose of a show case. This would seem to respond exactly to the provisions of subsection 18 of section 28, tariff act of 1909, in that it is a "form designed for use otherwise than in the bona fide transportation of such merchandise to the United States," and that it is unusual there is no question. So far as this importation is concerned, however, the claim that it was not a covering of the merchandise at all is a mere subterfuge. If the cases were imported empty, of course they should not be assessed with additional duty; but when imported holding pipes, as they were in this case, we think the additional duty should be assessed. The protest is therefore overruled.

(T. D. 34677.)

Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, Somerville, and Hay.

BEFORE BOARD 1, JULY 27, 1914.

No. 86207.—JEWELRY.—Protests 532965, etc., of B. Altman & Co. et al., protests 733989, etc., of Bloomingdale Bros. et al., protests 450872, etc., of Louis A. Consmiller et al., protests 711928, etc., of Lippmann, Spier & Hahn et al., and protests 408201, etc., of D. Lisner & Co. et al. (New York). Opinions by Sullivan, G. A.

G. A. 7129 (T. D. 31089) followed as to jewelry in part of metal held dutiable under paragraph 199, tariff act of 1909. On the authority of United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506) imitation jet articles were held dutiable under paragraph 109. Merchandise commonly known as jewelry was held dutiable under paragraph 448 on the authority of Cohn *v.* United States (4 Ct. Cust. Appls., 378; T. D. 33536). United States *v.* Flory (4 Ct. Cust. Appls., 87; T. D. 33367), Abstract 26173 (T. D. 31774), and G. A. 7251 (T. D. 31786) followed as to lace pins, rubber jewelry, and toy jewelry Protests sustained in part.

No. 86208.—MINERAL WAX—CHEMICAL COMPOUND.—Protest 693010 of W. A. Brown & Co. (New York). Opinion by Brown, G. A.

Merchandise invoiced as mineral wax and classified as a chemical mixture under paragraph 3, tariff act of 1909, was held free of duty as mineral or vegetable wax (par. 707), as claimed. Abstract 36042 (T. D. 34609) followed.

No. 86209.—DRUGS ADVANCED IN VALUE—HERBS.—Protest 671359 of Hensel, Bruckmann & Lorbacher (New York). Opinion by Brown, G. A.

Protest overruled as to herbs of various kinds cut to facilitate transportation, classified as drugs advanced in value under paragraph 20, tariff act of 1909. Perry *v.* United States (2 Ct. Cust. Appls., 374; T. D. 32096) noted.

No. 86210.—HERRINGS—MACKEREL.—Protest 711463 of B. M. Shipman Co. (New York). Opinion by Brown, G. A.

Certain fish was held dutiable as mackerel, pickled, under paragraph 273, tariff act of 1909, and herrings (par. 272). Protest sustained. United States *v.* Smith (4 Ct. Cust. Appls., 70; T. D. 33312) followed.

No. 86211.—FISH IN TINS.—Protests 651793–42165, etc., of Adams Express Co. et al., protests 602129–41015, etc., of C. L. Benson et al., protests 500314-37105, etc., of Bernard, Judae & Co. et al., and protests 457822–35161, etc., of A. Russo & Co. (Chicago), protests 611067–3992, etc., of C. H. Lawrence & Co. et al. (New Orleans), protests 688401, etc., of S. Briones et al., protests 430067, etc., of F. Cusimano, protests 557342, etc., of D. Sclafani & L. Marinello et al., and protests 665495, etc., of Von Bremen, Asche & Co. (New York), and protests 626341, etc., of Strohmeyer & Arpe Co. et al. (New York, etc.). Opinions by Brown, G. A.

United States *v.* Smith (4 Ct. Cust. Appls., 70; T. D. 33312); United States *v.* Miller (5 Ct. Cust. Appls., —; T. D. 34443), and Smith *v.* United States (5 Ct. Cust. Appls., —; T. D. 34008) followed as to fish in tins.

No. 86212.—PROTESTS ABANDONED.—Protests 29328, etc., of Remy, Schmidt & Pleissner et al. (New York, etc.).

Protests abandoned.

BEFORE BOARD 2, JULY 27, 1914.

No. 86213.—CHAIN-MAKING MACHINES—WATCHCASE ENGRAVING MACHINES—GRINDING MACHINES.—Protests 703680, etc., of J. W. Hampton, jr., & Co. et al., protests 620206, etc., of Hensel, Bruckmann & Lorbacher et al., and protests 731828, etc., of Norma Company of America (New York). Opinions by Fischer, G. A.

Chain-making machines, watchcase engraving machines, and machines used for grinding parts of ball bearings, classified as manufactures of metal under paragraph 199, tariff act of 1909, or paragraph 167, tariff act of 1913, were held dutiable as machine tools, as claimed. G. A. 7559 (T. D. 34413) followed. Protests sustained in part.

No. 86214.—BRASS-WIRE CLOTH.—Protest 694859 of C. H. Wyman & Co. (St. Louis). Opinion by Fischer, G. A.

Protest sustained claiming brass-wire cloth dutiable under paragraph 199, tariff act of 1909. United States *v.* McCoy (4 Ct. Cust. Appls., 396; T. D. 33838) followed.

No. 86215. ALUMINUM IN SHEETS.—Protests 713141, etc., of A. Seligmann et al. (New York). Opinion by Fischer, G. A.

Protests overruled as to aluminum in sheets classified under paragraph 199, tariff act of 1909, and claimed dutiable under paragraph 172. Universal Shipping Co. *v.* United States (4 Ct. Cust. Appls., 245; T. D. 33479) followed.

No. 86216.—MICA.—Protest 731533 of Westinghouse Electric & Manufacturing Co. (Pittsburgh). Opinion by Fischer, G. A.

Certain mica classified under paragraph 77, tariff act of 1913, as cut, was held dutiable as unmanufactured under the same paragraph, as claimed.

No. 86217.—PRINTING PAPER.—Protest 736483 of Walther & Co. (New York). Opinion by Fischer, G. A.

Protest sustained as to merchandise classified as paper not specially provided for under paragraph 332, tariff act of 1913, and claimed dutiable as suitable for the printing of books and newspapers (par. 322).

No. 86218.—PUBLICATIONS FOR GRATUITOUS PRIVATE CIRCULATION.—Protest 742505 of Cunard Steamship Co. (Boston). Opinion by Fischer, G. A.

Small books or pamphlets entitled "Mediterranean Cruise—Cunard," classified as books under paragraph 329, tariff act of 1913, were claimed free of duty as "publications of individuals for gratuitous private circulation" (par. 425). Protest overruled.

No. 86219.—PUBLICATIONS FOR GRATUITOUS CIRCULATION.—Protests 706438, etc., of Cassella Color Co. (New York). Opinion by Fischer, G. A.

Books entitled "Manual of Dyeing with the Dyestuffs of Leopold Cassella & Co." were held free of duty under paragraph 517, tariff act of 1909, as "publications of individuals for gratuitous private circulation," as claimed.

No. 36220.—PROTESTS OVERRULED.—Protests 705270, etc., of American Express Co., and protests 744611, etc., of McLaughlin & Freeman et al. (Boston), protest 744072 of Hawley & Letzerich (Galveston), protest 741141 of Belknap Hardware & Manufacturing Co. (Louisville), protests 537748, etc., of Dingelstedt & Co. et al., and protests 602944, etc., of Ernst Wiener Co. et al. (New York), protest 519408 of J. W. Cruikshank (Pittsburgh), protest 732390 of Sucs. de A. Mayol & Co. (San Juan), and protest 723335 of Geo. S. Bush & Co., and protest 739965 of J. T. Steeb & Co. (Seattle). Opinions by Fischer, G. A.

Protests unsupported; overruled.

No. 36221.—PROTESTS DISMISSED.—Protests 733406, etc., of H. Ulrich (New York). Opinion by Fischer, G. A.

Protests dismissed upon stipulation of counsel.

No. 36222.—PROTESTS ABANDONED.—Protest 726740 of A. S. Head (Burlington).

Protest abandoned.

BEFORE BOARD 3, JULY 27, 1914.

No. 36223.—PARSLEY SEED—DRUGS, CRUDE.—Protest 713644 of R. E. Anderson & Co. (New York).

WAITE, *General Appraiser:* The commodity imported in this case is described as parsley seed. It was assessed for duty under paragraph 266, tariff act of 1909, at 4 cents per pound, it being specifically mentioned in that paragraph. The importers claim it is free of duty under paragraph 559 as a crude drug not advanced in value or condition, or under paragraph 630, which provides for "moss, seaweeds, and vegetable substances, crude or unmanufactured, not otherwise specially provided for in this section." Failing in these two claims the importers maintain it is dutiable under paragraph 20 as a drug advanced in value at one-fourth of 1 cent per pound and 10 per cent ad valorem.

The commodity is small dark seeds, and the testimony shows it to be parsley seed. An inspection of the sample produced in evidence reveals the fact that it is aromatic. In our judgment it has not been advanced in value.

We are of the opinion that paragraph 630 can not be applied; that the seed is either assessable under paragraph 266 as parsley seed, or that it is free of duty under paragraph 559 as a crude drug not advanced in value.

The testimony shows that the commodity was imported for a medicinal purpose; at all events it was sold to and used by manufacturing druggists and chemists. It is conclusively shown that it will not germinate. We are of the opinion that a seed to fulfill the definition of seed should possess the germinating quality.

The Standard Dictionary defines "seed" as follows:

Seed.—Bot. The fertilized ovule with an embryo formed within it; an independent reproductive body containing, when cast off by the parent, a new plant or embryo that, on germination, gives rise to a plant like that from which it came.

If this commodity was imported for planting purposes to reproduce parsley, it could not, within the meaning of the above definition, be held to be seed, as it would be absolutely useless for such purpose; hence we are of the opinion that the use for which it is intended and to which it is actually put should govern in this case. This, in our judgment, is distinguished from that class of seeds which *may* be used for planting purposes, where the germinating quality is essential, but still have a further and dominant use as a food. For instance, in the case of wheat, or any of the cereals which are specifically provided for as such in the tariff act, it is recognized that the domi-

nant use is for food purposes, and it may very consistently be held that a particular importation should be classified as wheat, or oats, or rye, as specifically provided for, though it will not germinate. In the case before us, parsley seed is specifically provided for in the seed paragraph (266), but as this importation does not possess the germinating quality and was not imported for planting purposes, we are of the opinion that it is not a seed within the meaning of that paragraph, but falls under the provision in paragraph 559 for "drugs, such as * * * seeds (aromatic, not garden seeds), * * * in a crude state." The protest is therefore sustained, and free entry granted under paragraph 559. Note United States *v.* Kauffman (84 Fed., 446) and United States *v.* Shing Shun & Co. (2 Ct. Cust. Appls., 388; T. D. 32113).

No. 86224.—"SHOYU"—SAUCE.—Protests 663759, etc., of Okada & Ichida Co. et al. (San Francisco and Los Angeles).

WAITE, *General Appraiser:* The commodity in these cases, imported from Japan, is invoiced as "shoyu." It is in tubs containing about 4 gallons each. It has been assessed at 40 per cent ad valorem under the provision in paragraph 253, tariff act of 1909, for "sauces of all kinds." The importers claim it is dutiable at 20 per cent ad valorem under paragraph 480 as an unenumerated manufactured article.

Considerable testimony has been taken on the part of the importers. The witnesses produced are for the most part Japanese who have lived for a considerable time in this country, and who have in each instance been familiar with this commodity for a number of years—some of them as many as 20 years. They are also familiar with the method of manufacture. The testimony as to how it is produced varies somewhat, but in the main is as stated in Exhibit 1, introduced in connection with the testimony of witness Miwa. This document reads as follows:

Method of shoyu brewing.

TOKYO, JAPAN, *August 10, 1913.*

Materials: Soya beans, wheat, salt, and water.

Some picked wheat is placed in iron pot and parched with proper heat and then is pounded in grinder. At the same time some soya beans are placed in a boiler and boiled for three to four hours, and then it is cooled until it reaches about 40° C., and mix it well with those pounded wheat, and the compound is measured and placed in flat tray, commonly known as "yeast tray," and keep it in a yeast cellar for four to five days, when the process of fermentation ceases. What is thus resulted is called "koji" or "yeast" or "barm."

On the other hand, a certain quantity of salt is dissolved into water and well boiled and then, after cooled, it is removed into what is known as fitting tub. At this point the koji (yeast or barm) is mixed with this and keep the compound, stirring it with a sort of paddle several times a day and thus letting it gradually fermented until it turns to a form of liquid, with more or less reddish dark color, known as "moromi" (unbrewed liquid). It requires from one to two or three years to mature. And then put the "moromi" in hemp bag and place it in squeezing apparatus, and the liquid is thus separated from the dregs. This liquid again placed in double boiler and is properly heated. What is thus produced is the so-called "shoyu."

The sample presented as representative of these importations appears to be a dark reddish-brown liquid. At a temperature of 80° F. it appears to be thicker than water, of a rather sticky consistency.

In G. A. 6550 (T. D. 27944) the board stated that thin soy was concededly a table condiment of Chinese and Japanese origin and indicated that it was a sauce. The board held in that case that thick soy was properly dutiable as an unenumerated manufactured article. This ruling was affirmed in United States *v.* Wo On & Co. (167 Fed., 314; T. D. 29571).

A commodity called "shoyu" was passed upon in Abstract 12761 (T. D. 27591) and was there classified as a sauce, as the record did not show it to be a thick soy, which had been held to be a manufactured article.

The method in which the commodity in the cases at bar is used must be considered as important in determining how it should be classified. The witnesses familiar with the use of shoyu practically agree in their testimony that this commodity is very largely used as a flavoring in preparing food and not as a sauce. It is used in the kitchen or culinary departments and cooked with the food which is being prepared. The testimony shows that perhaps 5 per cent is used on the table to give a flavor to the cooked food. It appears, however, that of this 5 per cent a considerable portion is changed or modified in some way by the addition of vinegar, sugar, etc., in order to make it suitable for use as a flavoring or sauce for the prepared comestibles. Probably not over 1 per cent, if the testimony is to be relied upon, is used in its raw or original condition on the table with the food. The testimony, we think, clearly shows that the great part of it is used as salt would be used, and also for the purpose of coloring the food, which is insisted upon as a matter of taste by the Japanese. We are therefore of the opinion that this is not a sauce within the meaning of that term in the statute. It differs somewhat in its constituent parts, according to the evidence in the case, from the commodity passed upon by the board and the court, which was Chinese soy. See G. A. 6550 (T. D. 27944); United States *v.* Wo On & Co. (167 Fed., 314; T. D. 29571), *supra*. We are of the opinion, however, that it may be, on the whole, considered as about the same commodity from the standpoint of the law as the thick soy there considered. From the description given of the method of its manufacture, which seems to require careful, elaborate, and somewhat tedious handlings and manipulations before the article can be said to have been regularly produced, we find it to be a manufactured article, and dutiable as claimed by the importers under paragraph 480 at 20 per cent ad valorem.

The protests scheduled are therefore sustained with the exception of protests 654469, 680411, and 680412, which were not filed in time, and for that reason are dismissed.

No. 36225.—Bronze and Ivory Statue—Sculptures.—Protest 431553 of Peter Gibson (New York). Opinion by Waite, G. A.

Merchandise described by the appraiser as a cast bronze figure of recent production, fitted with ivory, classified as a manufacture of metal under paragraph 199, tariff act of 1909, was held dutiable as sculptures (par. 470).

No. 36226.—Wood Pulp—Canadian Reciprocity—Favored Nations.—Protests 618863, etc., of Stone & Downer Co. et al. (Boston, etc.). Opinion by Somerville, G. A.

American Express Co. *v.* United States (4 Ct. Cust. Appls., 146; T. D. 33434) followed as to wood pulp.

No. 36227.—Fire Brick.—Protest 720389 of G. W. Sheldon & Co. (New York). Opinion by Hay, G. A.

Merchandise classified as "brick other than fire brick" under paragraph 84, tariff act of 1909, was held dutiable as fire brick under the same paragraph.

No. 36228.—Clerical Error.—Protest 726038 of B. N. Moore & Sons Co. (Boston). Opinion by Hay, G. A.

United States *v.* Swedish Produce Co. (4 Ct. Cust. Appls., 223; T. D. 33437), United States *v.* Wyman (4 Ct. Cust. Appls., 264; T. D. 33485), and G. A. 7476 (T. D. 33590) followed as to clerical error.

No. 86229.—Pro Forma Invoice—Value.—Protest 727144 of Bemis Bro. Bag Co. (Boston). Opinion by Hay, G. A.

Protest overruled, claiming that duty should have been assessed upon the value given in the pro forma invoice, which was also the appraised value. United States *v.* Hobbs (3 Ct. Cust. Appls., 256; T. D. 32567) followed.

No. 86230.—Imitation Pearl Beads—Fitted Leather Cases.—Protest 639764 of J. L. Vandiver (Philadelphia). Opinion by Hay, G. A.

Lorsch *v.* United States (5 Ct. Cust. Appls., —; T. D. 34132) followed as to imitation pearl beads. United States *v.* Cross (4 Ct. Cust. Appls., 274; T. D. 33489) and Abstract 33671 (T. D. 33763) followed as to fitted leather cases.

No. 86231.—Shortage.—Protest 726176 of Arnold Hoffman & Co. (New York). Opinion by Hay, G. A.

Protest overruled claiming shortage of olive oil.

Before Board 1, July 31, 1914.

No. 86232.—Thermometers and Boxes—Entireties—Dutiable Value—Sand Glasses.—Protests 684472, etc., of Eimer & Amend (New York). Opinion by Sullivan, G. A.

Bath thermometers in chief value of wood were held dutiable under paragraph 215, tariff act of 1909, as claimed. Protests overruled as to sand glasses set in wooden holders or stands, composed in chief value of wood and glass, classified under paragraph 98, tariff act of 1909. Thermometers with paper scales inclosed in cardboard boxes, which were claimed should have been treated as entireties and the value of the boxes included in arriving at the component material of chief value, were held dutiable as blown glass under paragraph 98, as classified. G. A. 7346 (T. D. 32378) and Spielman *v.* United States (2 Ct. Cust. Appls., 61; T. D. 31626) cited.

Before Board 2, July 31, 1914.

No. 86233.—Imitation Horsehair Hats—Trimmed Hats.—Protests 230298, etc., of Hunker, Neale & Forbes (New York). Opinion by Howell, G. A.

Thomass *v.* United States (1 Ct. Cust. Appls., 86; T. D. 31107) and United States *v.* Cochran (3 Ct. Cust. Appls., 57; T. D. 32349) followed as to imitation horsehair hats. Untrimmed hats composed of straw were held properly dutiable under paragraph 409, tariff act of 1897.

No. 86234.—Protests Abandoned.—Protests 320745, etc., of J. Bieber et al., and protests 560267, etc., of W. Simpson et al. (New York).

Protests abandoned.

Before Board 3, July 31, 1914.

No. 86235.—Protest, Timeliness—Customs Regulations—Notice of Liquidation.—Protest 704184 of R. Pierson & Co. (St. Louis). Opinion by Waite, G. A.

A protest filed more than 15 days after liquidation was claimed to be within the law, for the reason that notice of liquidation was not received by the importers. Protest dismissed, no requirement for such notice being in the statute.

No. 36236.—BARLEY—SCREENINGS.—Protests 652794, etc., of Atwood, Stone Co. (Minneapolis). Opinion by Waite, G. A.

Merchandise classified as barley under paragraph 230, tariff act of 1909, was claimed to be barley screenings, dutiable as a nonenumerated unmanufactured article (par. 480). Protests overruled. Abstract 34075 (T. D. 33872) followed.

No. 36237.—ARTISTIC ANTIQUITIES.—Protest 705983 of Baques Frères & Co. (New York). Opinion by Waite, G. A.

Protest overruled claiming certain articles free of duty as artistic antiquities under paragraph 717, tariff act of 1909.

No. 36238.—VEGETABLE FIBER.—Protests 707678, etc., of F. H. Cone et al. (New York and Baltimore).

The question in this case is whether certain vegetable fiber is partially or wholly manufactured. It was classified as a nonenumerated manufactured article under paragraph 480, tariff act of 1909, or 385, tariff act of 1913.

HAY, *General Appraiser:* * * * There is some apparent conflict in the decisions of this board on merchandise that is, if not identical, very similar to that under consideration in this case. This conflict, however, grows out of the very incomplete records upon which the cases were finally submitted; and the record upon which United States *v.* Flatt (5 Ct. Cust. Appls., —; T. D. 34379) was taken to the Court of Customs Appeals was so incomplete as to render the opinion in the case indecisive. Uniformity in the administration of customs law is of the highest importance, and there is no branch of the law wherein the rule of *stare decisis* should be given greater weight than in the decision of customs cases. It however so frequently happens before this tribunal that cases are submitted upon an incomplete record—satisfactory testimony not being presented—that it is extremely difficult to reach exact conclusions as to the proper classification of merchandise. In the case at bar we think the testimony fails to overcome the presumption in favor of the correctness of the collector's action. The testimony of the chemist we think fairly shows that the merchandise is dyed. No attempt is made to controvert this by the importer, and, while not admitting it, he does not upon the witness stand make any denial of that fact. This, added to the fact that it is cut into uniform lengths and dressed, would indicate that it had passed through some process of manufacture to fit it for use in the manufacture of brooms or brushes. The protests are therefore overruled.

No. 36239.—RESIDUE FROM DISTILLATION.—Protest 729289 of Innis, Speiden & Co. (New York). Opinion by Hay, G. A.

Residue from distillation, classified as a nonenumerated article under paragraph 480, tariff act of 1909, was claimed dutiable as waste (par. 479). Protest overruled.

No. 36240.—SATSUMA WARE—ENAMELED EARTHENWARE.—Protest 723795–45192 of Burley & Tyrrell Co. (Chicago). Opinion by Hay, G. A.

Satsuma ware manufactured in Japan, composed of plain earthenware, glazed, was held properly classified as enameled earthenware under paragraph 93, tariff act of 1909, and not dutiable as plain white or plain brown earthenware (par. 94), as claimed. G. A. 7009 (T. D. 30543), Abstract 29543 (T. D. 32767), and Frank *v.* United States (2 Ct. Cust. Appls., 85; T. D. 31633) followed.

No. 36241.—COFFEE COMPOUND.—Protests 655990, etc., of Bedford Brown et al. (Port Townsend). Opinion by Hay, G. A.

Protests overruled as to coffee compound classified as a nonenumerated manufactured article under paragraph 480, tariff act of 1909.

(T. D. 34678.)

Sugar produced in the Netherlands.

Sugar produced in the Netherlands not subject to countervailing duty under paragraph E of section 4 of the tariff act of October 3, 1913.

TREASURY DEPARTMENT, *August 4, 1914.*

To collectors and other officers of the customs:

The department has received evidence showing that the Government of the Netherlands pays no bounty upon the exportation of sugar produced in that country.

Therefore T. D. 24812 of December 2, 1903, declaring a countervailing duty on sugar produced in the Netherlands is hereby revoked.

However, as sugar from certain countries is subject to a countervailing duty, the certificate of origin prescribed in paragraph 1 of T. D. 24668 of September 17, 1903, as amended by T. D. 27606 of September 14, 1906, will continue to be required on the entry of sugar from the Netherlands in order to establish the origin of such sugar.

(100638.) WM. P. MALBURN, *Assistant Secretary.*

(T. D. 34679.)

Drawback on mercurial preparations.

Drawback on mercurial preparations manufactured by Charles Pfizer & Co. (Inc.), of New York, N. Y., with the use of imported metal mercury.

TREASURY DEPARTMENT, *August 4, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on mercurial preparations designated as corrosive sublimate, calomel, red or yellow oxide of mercury, and ammoniated mercury manufactured by Charles Pfizer & Co., of New York, N. Y., with the use of imported metal mercury (quicksilver).

The allowance shall not exceed the quantity of imported mercury appearing in the exported preparations, as shown by the sworn statements of the manufacturers, dated July 2 and 21, 1914, which are transmitted herewith for filing in your office.

Supplemental sworn statements covering other mercurial preparations manufactured by this company with the use of imported metal mercury may be filed, and upon verification of such schedules drawback may be allowed on the preparations covered thereby.

Respectfully, WM. P. MALBURN,

(102302.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34680.)

Drawback on cigarette machines.

Drawback on cigarette machines manufactured by the American Machine & Foundry Co., of New York, N. Y., with the use of imported linked leather belting and bar steel.

TREASURY DEPARTMENT, *August 4, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on cigarette machines manufactured by the American Machine & Foundry Co., of New York, N. Y., with the use of imported bar steel and linked leather belting.

A manufacturing record shall be kept, which will show, in the case of each machine manufactured for exportation with benefit of drawback, the quantities of imported linked leather belting appearing therein, the quantity and value of imported bar steel used, the quantity appearing in the machine, and the quantity and value of the waste incurred. A sworn abstract from such manufacturing record shall be filed with each drawback entry.

The allowance shall not exceed the quantity of imported linked leather belting appearing in and the quantity of imported bar steel used in the manufacture of the exported cigarette machines, as shown by the sworn abstract from the manufacturing record, the allowance for imported steel to be reduced according to the quantity of that material which the value of the waste will replace.

The sworn statement of the manufacturers, dated July 1, 1914, is transmitted herewith for filing in your office.

Respectfully, WM. P. MALBURN,
(102117.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34681.)

Drawback on jewelry.

Drawback on jewelry manufactured by the Barber Jewelry Manufacturing Co., of New York, N. Y., with the use of imported semiprecious and imitation stones.

TREASURY DEPARTMENT, *August 4, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on jewelry manufactured by the Barber Jewelry Manufacturing Co., of New York, N. Y., with the use of imported semiprecious stones and imitation stones.

A manufacturing record shall be kept, which will show, in addition to the usual import data, the lot number and date of manufacture

of each lot of jewelry manufactured for exportation with benefit of drawback, the number of pieces of jewelry of each kind produced, and the number of imported semiprecious and imitation stones appearing therein, describing the same as in the import invoice. An abstract from such manufacturing record shall be filed with each drawback entry.

The allowance shall not exceed the number of imported semiprecious and imitation stones appearing in the exported jewelry, as shown by the abstract from the manufacturing record.

The articles specified therein may be exported by parcel post or regular mail, provided the same are insured or registered, as the case may be, and all requirements of the regulations (T. D. 32143) covering such exportations are complied with.

Respectfully, WM. P. MALBURN,
(102421.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34682.)

Drawback on adhesive pastes and liquid glue.

Drawback on adhesive pastes and liquid glue manufactured by the National Gum & Mica Co., of New York, N. Y., with the use of imported potato starch, potato dextrin, and dry glue.

TREASURY DEPARTMENT, *August 4, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on adhesive pastes manufactured by the National Gum & Mica Co., of New York, N. Y., with the use of imported potato starch or potato dextrin, and on liquid glue manufactured by the said company with the use of imported dry glue.

A manufacturing record shall be kept, which will show, in addition to the usual import data, the lot number and date of manufacture of each lot of adhesive paste or liquid glue manufactured for exportation with benefit of drawback, the quality and character of the imported material used, and the quantity and character of the preparation produced. A sworn abstract from such manufacturing record shall be filed with each drawback entry.

The allowance shall not exceed the quantity of imported material used in the manufacture of the exported preparations, as shown by the sworn abstract from the manufacturing record.

The sworn statement of the manufacturers, dated July 21, 1914, is transmitted herewith for filing in your office.

Respectfully, WM. P. MALBURN,
(101856.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34683.)

Rules of procedure and practice.

T. D. 34649 corrected to amend Rule 30 of the rules of procedure and practice before the Board of General Appraisers.

TREASURY DEPARTMENT, *August 4, 1914.*

To collectors of customs:

As the result of a typographical error in T. D. 34649, it was stated that an amendment to Rule 33 of the rules of procedure and practice before the Board of United States General Appraisers had been unanimously adopted by the board, whereas the amendment was an addition to Rule 30 of the said rules.

(102603.) BYRON R. NEWTON, *Acting Secretary.*

(T. D. 34684.)

Drawback on hats.

Drawback on ladies' trimmed hats manufactured by the London Feather Co., of New York, N. Y., with the use of imported untrimmed hat shapes.

TREASURY DEPARTMENT, *August 5, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on ladies' hats manufactured by the London Feather Co., of New York, N. Y., with the use of imported untrimmed hat shapes.

The allowance for each lady's trimmed hat exported shall not exceed one imported untrimmed hat shape of the character and value of that appearing therein.

The sworn statement of the manufacturers, dated July 21, 1914, is transmitted herewith for filing in your office.

Respectfully, WM. P. MALBURN,
(87596.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34685.)

Drawback on jams.

Drawback on jams manufactured by the Montclair Jam Kitchens, of Montclair, N. J., with the use of refined sugar produced from imported raw sugar.

TREASURY DEPARTMENT, *August 5, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations

(T. D. 31695 of June 16, 1911), on jams manufactured by the Montclair Jam Kitchens, of Montclair, N. J., with the use of refined sugar produced with the use of imported raw sugar.

A manufacturing record shall be kept, which will show, in addition to the usual data, the lot number and date of manufacture of each lot of jams manufactured for exportation with benefit of drawback, the quantity of refined sugar used in the manufacture of each kind of jam embraced in such lot, and the quantity of jam of each kind produced. A sworn abstract from such manufacturing record shall be filed with each drawback entry.

The refined sugar on which drawback shall be predicated shall not exceed the quantity used in the manufacture of the exported jams, as shown by the sworn abstract from the manufacturing record.

The sworn statement of the manufacturers, dated July 22, 1914, is transmitted herewith for filing in your office.

Respectfully, WM. P. MALBURN,
(102409.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34686.)

Drawback on dynamos and motors.

Drawback on dynamos and motors manufactured by Gray & Davis (Inc.), of Boston, Mass., with the use of imported ball bearings.

TREASURY DEPARTMENT, *August 5, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on dynamos and motors (starting and lighting systems for automobiles) manufactured by Gray & Davis (Inc.), of Boston, Mass., with the use of imported ball bearings.

The allowance shall not exceed the number of imported ball bearings appearing in the motors and dynamos exported, as shown by the sworn statement of the manufacturers, dated June 24, 1914, which is transmitted herewith for filing in your office.

Supplemental sworn schedules may be filed covering other styles of motors and dynamos manufactured with the use of imported ball bearings, and upon verification of such schedules drawback on the motors and dynamos covered thereby may be allowed.

Respectfully, WM. P. MALBURN,
(101006–8.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 34687.)

Drawback on self-starting devices for automobiles.

Drawback on self-starting devices for automobiles manufactured by Gray & Davis (Inc.), of Boston, Mass., with the use of imported ball bearings, for the account of the Lozier Motor Co., of Detroit, Mich.

TREASURY DEPARTMENT, *August 6, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on self-starting devices manufactured for the account of the Lozier Motor Co., of Detroit, Mich., by Gray & Davis (Inc.), of Boston, Mass., with the use of imported ball bearings, when exported in connection with automobiles, motors, motor assemblies, or separately.

The allowance shall not exceed the number of imported ball bearings appearing in the exported self-starting devices, as shown by the sworn statements of the Lozier Motor Co. and Gray & Davis (Inc.), dated May, 1914, which are transmitted herewith for filing in your office.

Respectfully, WM. P. MALBURN,
(59874.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Detroit, Mich.*

(T. D. 34688.)

Drawback on binder twine.

Drawback on binder twine manufactured by the Peoria Cordage Co., of Peoria, Ill., with the use of imported degras.

TREASURY DEPARTMENT, *August 6, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on binder twine manufactured by the Peoria Cordage Co., of Peoria, Ill., with the use of imported degras.

A manufacturing record shall be kept, which will show, in addition to the usual import data, the lot number and date of manufacture of each lot of binder twine manufactured for exportation with benefit of drawback, the quantity and value of the imported degras used, the quantity of binder twine produced, the quantity of waste incurred, and the value of such waste, if any. A sworn abstract from such manufacturing record shall be filed with each drawback entry.

The allowance shall not exceed the quantity of imported degras used in the manufacture of the exported binder twine, as shown by the sworn abstract from the manufacturing record, the allowance to be reduced according to the quantity of imported material which the value of the waste will replace.

The sworn statement of the manufacturer, dated June 9, 1914, is transmitted herewith for filing in your office.

Respectfully, BYRON R. NEWTON,
(59712.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Chicago, Ill.*

(T. D. 34689.)

Drawback on covers for automobile seats, tops, etc.

Drawback on covers for automobile seats, tops, cushions, etc., manufactured by the Sterling Top & Equipment Co., of New York, N. Y., with the use of imported fabrics.

TREASURY DEPARTMENT, *August 6, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the general drawback regulations (T. D. 31695 of June 16, 1911), on seat covers, door covers, cushion covers, back covers, top dust covers, and similar covers for automobiles manufactured by the Sterling Top & Equipment Co., of New York, N. Y., with the use of imported fabrics.

A manufacturing record shall be kept, which will show, in addition to the usual import data, the lot number and date of manufacture of each lot of covers manufactured for exportation with benefit of drawback, the quantity, character, and value of imported fabrics used, the number of covers of each kind and size produced, the quantity of imported fabric appearing therein, the quantity of waste incurred, and the value of such waste, if any. A sworn abstract from such manufacturing record shall be filed with each drawback entry.

The allowance shall not exceed the quantity of imported fabric used in the manufacture of the exported covers, as shown by the abstract of the manufacturing record, the allowance to be reduced according to the quantity of imported material which the value of the waste will replace.

The sworn statement of the manufacturers, dated July 14, 1914, is transmitted herewith for filing in your office.

Respectfully, BYRON R. NEWTON,
(102398.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34690.)

Drawback on flavoring extracts.

Drawback on flavoring extracts manufactured by Seeman Bros., of New York, N. Y., with the use of domestic tax-paid alcohol.

TREASURY DEPARTMENT, *August 6, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on flavoring extracts manufactured by Seeman Bros., of New York, N. Y., with the use of domestic tax-paid alcohol.

The allowance shall not exceed the quantity of domestic tax-paid alcohol appearing in the exported flavoring extracts, with an addition to compensate for waste incurred, as shown by the sworn schedule of the manufacturers, dated March 25, 1914, which is transmitted herewith for filing in your office.

At the end of each calendar year a sworn statement shall be filed by the manufacturer, which will indicate whether there has been any change of the formulas in accordance with which the extracts specified are manufactured.

Respectfully, BYRON R. NEWTON,
(49902.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34691.)

Drawback on turbine blowers.

Drawback on turbine blowers manufactured by the Terry Steam Turbine Co., of Hartford, Conn., with the use of imported fan wheels.

TREASURY DEPARTMENT, *August 6, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on turbine blowers manufactured by the Terry Steam Turbine Co., of Hartford, Conn., with the use of imported fan wheels.

A manufacturing record shall be kept, which will show, in addition to the usual import data, the number of imported fan wheels appearing in each turbine blower exported. A sworn abstract from such manufacturing record shall be filed with each drawback entry.

The allowance shall not exceed the number of imported fan wheels appearing in the exported turbine blowers, as shown by the abstract from the manufacturing record.

The sworn statement of the manufacturers, dated July 13, 1914, is transmitted herewith for filing in your office.

Respectfully, BYRON R. NEWTON,
(102320.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34692.)

Drawback on medicinal preparations.

Drawback on Janin's Antiseptic, manufactured by I. L. Lyons & Co. (Ltd.), of New Orleans, La., with the use of domestic tax-paid alcohol.

TREASURY DEPARTMENT, *August 6, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on a medicinal preparation designated as "Janin's Antiseptic," manufactured by I. L. Lyons & Co. (Ltd.), of New Orleans, La., with the use of domestic tax-paid alcohol.

A manufacturing record shall be kept, which will show, in addition to the usual data, the lot number and date of manufacture of each lot of Janin's Antiseptic manufactured for exportation with benefit of drawback, the quantity and proof of domestic tax-paid alcohol used, and the quantity of the preparation obtained. A sworn abstract from such manufacturing record shall be filed with each drawback entry.

The allowance shall not exceed the quantity of domestic tax-paid alcohol used in the manufacture of the exported preparation, as shown by the abstract from the manufacturing record. The sworn statement of the manufacturers, dated July 6, 1914, is transmitted herewith for filing in your office.

Respectfully, BYRON R. NEWTON,
(102240.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New Orleans, La.*

(T. D. 34693.)

Neutrality—Clearance of vessels.

Instructions to collectors of customs relative to the clearance of merchant vessels.—All such vessels subject to inspection and examination of papers.—Instructions relative to vessels of war.

TREASURY DEPARTMENT, *August 10, 1914.*

To collectors of customs:

1. You will permit foreign-bound vessels to clear only after they have filed with you their full and final manifests.

2. You will notify all merchant vessels in your district that they will be subject to inspection and examination of documents, ships, and cargoes by United States authorities before clearance is given, and will be subject to further examinations by United States authorities after clearance and while such vessel remains within the territorial waters of the United States. Such vessels shall stop and lie to for examination when signaled by a United States vessel.

3. Any foreign-bound vessel whose character as a merchant vessel is established to your satisfaction is entitled to clearance (subject to the requirements of paragraph 1), no matter what the character of her cargo or what her destination.

4. You will not refuse clearance to merchant vessels, whether of the United States or other neutral power, or whether of a belligerent power, solely on the ground that the cargo contains contraband of war.

5. When a vessel of a belligerent power, which has arrived as a merchant vessel, alters, or attempts to alter, her status as a merchant vessel or there is reason to believe she intends to alter such status, so as to become an auxiliary cruiser or an armed vessel in any degree, you will immediately notify the department by wire, giving all particulars. Any of the following acts will constitute such a change of status: (*a*) The placing in position or otherwise changing the location of guns which were on board the vessel at the time of her arrival; (*b*) so changing the appearance, color, rig, or equipment of a vessel as to render her suitable for some purpose of war; (*c*) the taking on board of guns, arms, or ammunition under circumstances which in any way indicate the outfitting of the vessel for any purpose of war, or in aid of a military expedition.

6. Should any vessel depart or attempt to depart from your district without a regular clearance, you will wire the department and also the commander of the nearest naval vessel or revenue cutter.

7. You will report by wire to the department and to the commander of the nearest naval vessel or naval station the arrivals and departures of all war vessels of foreign nations.

8. In case of doubt wire the department for instructions.

9. All telegrams relating to the foregoing and similar questions should be, until further orders, addressed, "Customs Division, Treasury Department, Washington, D. C."

W. G. McAdoo,
Secretary of the Treasury.
Wm. C. Redfield,
Secretary of Commerce.

(T. D. 34694.)

Bars, bands or strips, and plates of steel.

Lines of demarcation between bars, bands or strips, and plates of steel defined.

TREASURY DEPARTMENT, *August 7, 1914.*

SIR: I have to acknowledge the receipt of your letter of the 22d ultimo relative to what articles are, for tariff purposes, to be treated as steel bars, steel plates, etc.

You transmit with your letter a communication from the appraiser, in which he suggests that in order to secure uniform practice at the various ports, and for the information of the public as well, it would seem that arbitrary lines of demarcation should be established between bars, bands or strips, and plates, and he suggests the following:

Over $\frac{3}{16}$ by 7 inches and under as bars.
Three-sixteenths and under by 7 inches and under as bands or strips.
Over 7 inches in width and up to 2½ inches thick as sheets and plates.

The appraiser further recommends that material of the character under consideration thicker than 0.140 of an inch be classified as plates and material 0.140 of an inch thick and thinner be denominated sheets.

After careful consideration of the question the department concurs in the views of the appraiser and you will be governed accordingly in the classification of this merchandise.

Respectfully, BYRON R. NEWTON,
(102429.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34695.)

Enforcement of neutrality laws.

Executive order relative to the issuance of instructions concerning the enforcement of neutrality laws.

TREASURY DEPARTMENT, *August 11, 1914.*

To collectors and other officers of the customs:

The appended Executive order is published for your information.

(102574.) BYRON R. NEWTON, *Assistant Secretary.*

EXECUTIVE ORDER.

In order to secure a more prompt and effective enforcement of the neutrality laws to meet the emergent conditions now existing, it is hereby ordered that all instructions to customs officers concerning the enforcement of the neutrality laws of the United States shall, until otherwise directed, be issued by the Treasury Department.

WOODROW WILSON.

THE WHITE HOUSE, *August 8, 1914.*

(T. D. 34696—G. A. 7593.)

Time of filing protest.

TIME OF FILING PROTEST—IMPORTER'S REMEDIES UNDER SUBSECTION 14, SECTION 28, ACT OF 1909.

Subsection 14 of section 28 of the tariff act of 1909 provides for two distinct remedies for two distinct transactions by the collector whereat the citizen may feel aggrieved—one in the case of the collection of fees, charges, and exactions, and the other in the collection of duties.

United States General Appraisers, New York, August 4, 1914.

In the matter of protest 723883 of Mrs. J. B. Dimmicks against the assessment of duty by the collector of customs at the port of Buffalo.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers; SOMERVILLE, G. A., not participating).

HAY, *General Appraiser:* On the 18th day of September, 1913, Mrs. J. B. Dimmicks entered the port of Buffalo as a resident of the United States returning from abroad. She was required by the collector of the port of Buffalo to pay duty on certain articles coming within the $100 exemption of paragraph 709 of the tariff act of 1909. She made a baggage declaration, and a deposit was required, as is usual in the administration of customs. The entry was thereafter liquidated, on the 9th day of October, 1913, and duty upon the merchandise assessed. Acting under the advisement of counsel, Mrs. Dimmicks filed a protest on the 3d day of October, 1913, claiming the exemption. The case came on to be tried by this board at New York on the 25th day of May, 1914, at which time the Assistant Attorney General moved that the protest be dismissed for want of jurisdiction.

That part of subsection 14 of section 28 of the tariff act of 1909 under which this protest was filed reads as follows:

SEC. 14. That the decision of the collector as to the rate and amount of duties chargeable upon imported merchandise, including all dutiable costs and charges, and as to all fees and exactions of whatever character (except duties on tonnage), shall be final and conclusive against all persons interested therein, unless the owner, importer, consignee, or agent of such merchandise, or the person paying such fees, charges, and exactions other than duties, shall, within 15 days after but not before such ascertainment and liquidation of duties, as well in cases of merchandise entered in bond as for consumption, or within 15 days after the payment of such fees, charges, and exactions, if dissatisfied with such decision, give notice in writing to the collector, setting forth therein distinctly and specifically, and in respect to each entry or payment, the reasons for his objections thereto. * * *

The testimony of the witness was heard, and the motion to dismiss taken under advisement, counsel being allowed time to file briefs, which they have done.

It is apparent from the above record that the protest was filed before the entry was liquidated. The Government therefore contends that the board has not jurisdiction. The importer's contention is that

the board has jurisdiction because of the provision for filing a protest "within fifteen days after the payment of such fees, charges, and exactions."

Two distinct remedies for two distinct transactions by the collector whereat the citizen may feel aggrieved were given by subsection 14, as was pointed out by this board in the American Express Co.'s case, G. A. 6552 (T. D. 27962), which was affirmed by the United States Circuit Court for the Southern District of New York in United States *v.* American Express Co. (154 Fed., 996; T. D. 28285). We can not better express our views upon the point raised by counsel for the importer in this case than to quote the following paragraph of that decision:

> As pointed out, section 14, in our judgment, provides two distinct and separate acts of the collector against which protest may be filed—first, his decision as to the rate and amount of duties upon imported merchandise, and, second, his decision upon fees and exactions. We think this is made perfectly clear by the fact that the limitation of time wherein protests may be filed is separately stated. A protest against the decision of the collector as to the rate and amount of duty must, under the section, be filed within 10 days after, but not before, the ascertainment and liquidation of the duties. A protest against fees and exactions must be filed within 10 days after the payment of such fees, charges, and exactions.

The moneys collected by the collector from Mrs. Dimmicks were duties and not fees, charges, and exactions; hence her remedy was by protest, which under subsection 14 she must have filed within 15 days after, but not before, the ascertainment and liquidation of duties. As the protest in this case was filed before the liquidation of duties, it is dismissed for want of jurisdiction.

(T. D. 34697—G. A. 7594.)

Wrought earth.

1. CONSTRUCTION OF A STATUTE—SCOPE OF STATUTORY PROVISIONS.

To be dutiable under paragraph 11 of the tariff act of 1913 the merchandise, if not expressly manufactured for use as blacking, polishing powder, a cream or preparation for cleaning or polishing, it must at least be imported for use as such. Wrought earth which it is possible, but impractical, to use as a polishing powder will not be held dutiable under paragraph 11 unless it is shown to have been expressly manufactured for or intended to be used as such.

2. SAME—PROVISIONS OF A NEW ACT.

The classification of a commodity long established should not be held to have been changed by a change in the tariff law, except where that change is made clear and distinct by the express language of the law.

United States General Appraisers, New York, August 4, 1914.

In the matter of protest 736128 of Borsum Bros. against the assessment of duty by the collector of customs at the port of New York.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers; SOMERVILLE, G. A., not participating).

HAY, *General Appraiser:* The merchandise in this case is invoiced as polishing earth, assessed by the collector under paragraph 11 of

the tariff act of 1913, and claimed by the importer to be free of duty under paragraph 518 or 549, or dutiable under paragraph 76.

The testimony shows that it is the same as the earth which was the subject of the board's decision in Borsum Bros.' case, Abstract 32264 (T. D. 33409), and the record in that case was by agreement of counsel incorporated in the record in this case. The merchandise in that case was held to be wrought earth under paragraph 90 of the tariff act of 1909, which corresponds with paragraph 76 of the act of 1913. It is contended by the Assistant Attorney General that the law of 1913 made such change as to authorize a different classification of the merchandise in question, thus justifying the collector's classification under paragraph 11. Paragraph 11 corresponds with and takes the place of paragraph 7 of the act of 1909. Paragraph 7 reads:

Par. 7. Blacking of all kinds, twenty-five per centum ad valorem; all creams and preparations for cleaning or polishing boots and shoes, twenty-five per centum ad valorem.

Paragraph 11 of the act of 1913 reads:

Par. 11. Blacking of all kinds, polishing powders, and all creams and preparations for cleaning or polishing, not specially provided for in this section, fifteen per centum ad valorem: *Provided*, That no preparations containing alcohol shall be classified for duty under this paragraph.

The testimony shows that the merchandise in question is used in the manufacture of polishing creams and polishing pastes. It would appear from the testimony that if the merchandise is used at all in its present condition for polishing, it is used to a very limited extent. So far as this importer is concerned, practically the sole use made of the commodity in question is as an ingredient in the manufacture of polishing preparations. This is done by mixing the commodity with oil and grease. While the testimony shows that it is possible to use the earth as a polishing powder, the witness who states this also states that it can not be practically used as such. He goes on to say that any powder or any earthy substance can be used for polishing. This, of course, is a matter of common knowledge.

Two principles of law suggest themselves in construing paragraph 11. One is that the classification of a commodity, long established, should not be held to have been changed by a change in the tariff law, except where that change is made clear and distinct by the express language of the law. In other words, if the practice of the department for eight years and the decisions of the Board of General Appraisers are to be changed and a new and definite duty placed upon this commodity, that change must be authorized by a provision of law clearly expressed. The other is what is known as the doctrine of *ejusdem generis;* that is, where provision is made in a tariff law

for duty upon more than one commodity, any doubt or ambiguity with reference to words used to express a certain commodity may be solved by reference to the other commodities provided for in that paragraph. In the light of these two provisions of law we reach the conclusion that the merchandise in question is not covered by paragraph 11.

In paragraph 11 "blacking of all kinds" does not mean every substance that will blacken, but a preparation, if not expressly manufactured for, at least imported to be used for, the purpose of blacking. The language "preparations for cleaning or polishing" does not mean every cream or preparation that to some extent will cleanse or polish, but such creams or preparations as are either manufactured for or imported to be used for cleaning or polishing. "Polishing powders," in our judgment, does not mean every powdery substance that will polish, but all powders prepared or imported for the purpose of being used as a polish in the condition in which imported. This view, we think, is strengthened by the use of the plural "powders" instead of the singular "powder.'

The protest is therefore sustained and the collector directed to reliquidate the entry, following the board's decision in Borsum Bros.' case, *supra*, assessing duty under paragraph 76 at $1 per ton.

(T. D. 34698.)

Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, Somerville, and Hay.

BEFORE BOARD 1, AUGUST 4, 1914.

No. 36242.—FISH IN TINS.—Protests 420711, etc., of Neuman & Schwiers Co. et al., and protests 485997, etc., of Strohmeyer & Arpe Co. et al. (New York), and protest 705146 of Wieland Bros. (San Francisco). Opinions by Brown, G. A.

United States *v.* Rosenstein (1 Ct. Cust. Appls., 304; T. D. 31357), Ahlbrecht *v.* United States (2 Ct. Cust. Appls., 471; T. D. 32226), United States *v.* Smith (4 Ct. Cust. Appls., 70; T. D. 33312), and United States *v.* Miller (5 Ct. Cust. Appls., —; T. D. 34443) followed as to fish in tins. Protests sustained in part.

BEFORE BOARD 2, AUGUST 4, 1914.

No. 36248.—METAL-THREAD EMBROIDERED SCARFS.—Protest 596912 of B. Altman & Co. (New York).

HOWELL, *General Appraiser:* The merchandise consists of women's scarfs composed of silk netting made on the Lever or Gothrough machine and embroidered with metal threads, the metal threads being the component material of chief value. The protest is directed against the assessment of duty at the rate of 70 per cent ad valorem, and we therefore conclude that was the rate assessed on this merchandise, although it

is not readily ascertained from the record aside from the statement in the protest, and it does not appear from the record under what provision of law the assessment was made. In transmitting the protest to the board the collector states that—

The assessment of duty protested against was made in accordance with the return of the appraiser upon the invoice as stated in his special report herewith.

In the special report referred to by the collector the appraiser states that the—

Return for duty was made without advisory rate as wearing apparel of metal thread embroidery on silk netting, the netting being the product of the Lever or Gothrough machine.

The collector has not stated the rate of duty assessed, nor the provision of law under which the assessment was made, and it will be observed that the report of the appraiser, to which the collector refers, does not contain this information. We are therefore left to conjecture as to the provision of law under which the assessment was made.

Various claims for a rate of duty lower than 70 per cent ad valorem are made in the protest, but it appears from the brief of importers' counsel that the claim relied on is that these articles are properly dutiable at the rate of 15 cents per pound and 60 per cent ad valorem under the provision in paragraph 179 of the tariff act of 1909, for "articles made * * * in chief value of * * * metal threads."

In their brief importers' counsel state their contention as follows:

If these scarfs were not embroidered, they would undoubtedly be dutiable at 70 per cent ad valorem, under the proviso of paragraph 350, as wearing apparel composed in chief value of nettings made on the Lever machine. When they are embroidered, however, with metal threads, the metal threads being chief value, they are no longer within the meaning of paragraph 350, but are directly dutiable under paragraph 179 as articles made in chief value of metal threads at 15 cents per pound and 60 per cent ad valorem. There is nothing in the wording of paragraph 179 or in paragraph 350 which would have the effect of throwing them back into paragraph 350, and there is no applicable provision in the tariff act which could have this effect.

As these scarfs are not composed in chief value of any of the materials or goods specified in paragraph 350, we do not think their classification is controlled by the proviso to said paragraph. The goods are admittedly articles made in chief value of metal threads, and as such they are specifically provided for in paragraph 179; but as they are embroidered they are subject to the last proviso to paragraph 402, which reads as follows:

Provided further, That tamboured, embroidered, or appliquéd articles or fabrics shall pay no less rate of duty than that imposed upon the material if not so tamboured, embroidered, or appliquéd.

This proviso is not limited to the purview of the paragraph of which it forms a part. Claflin Co. *v.* United States (3 Ct. Cust. Appls., 401; T. D. 32988).

In United States *v.* Ewing (3 Ct. Cust. Appls., 333; T. D. 32624), a similar proviso was considered, and we think the ruling in that case is decisive of the issue here. Applying the principle of that decision to this case, the first thing to be determined is what is the rate of duty that the "material" would be required to pay provided it had been imported without being embroidered; and when that has been ascertained, to compare the same with such ad valorem rate as is equivalent to the compound rate of 15 cents per pound and 60 per cent ad valorem provided in paragraph 179 for the article embroidered with metal threads; and if it be found to be less than the latter rate, then the duty thereon shall be that provided for in paragraph 179; but if it be found to be more than the rate provided in paragraph 179, then such greater rate is to be assessed upon the imported article. As the silk netting—the "material" which is embroidered—was made on the Lever or Gothrough machine, it would be dutiable, if imported without the embroidery, at the rate of 70 per cent ad valorem under paragraph 350, and that rate is therefore the rate which must be compared with such ad valorem rate as is equivalent to the compound rate

provided in paragraph 179. If on reliquidation of the entry it is found that the rate provided in paragraph 179, when reduced to an ad valorem equivalent, is greater than 70 per cent ad valorem, the protest claiming the goods to be dutiable under that paragraph is sustained. If, however, it is found that the equivalent ad valorem rate under that paragraph is less than 70 per cent ad valorem, the protest is overruled.

No. 36244.—TRIMMED STRAW HATS.—Protest 685466 of B. Nugent & Bro. (St. Louis). Opinion by Howell, G. A.

United States *v.* Lord & Taylor (4 Ct. Cust. Appls., 322; T. D. 33521) followed as to trimmed straw hats. Protest sustained in part.

No. 36245.—UNTRIMMED HATS—LADIES' SCARFS—ARTIFICIAL SILK ORNAMENTS.—Protests 202217, etc., of Balch, Price & Co. et al., and protests 318068 and 398322 of Isler & Guye (New York). Opinions by Howell, G. A.

Ladies' untrimmed hats and scarfs classified under paragraph 390, tariff act of 1897, were held dutiable by similitude as cotton wearing apparel (par. 314). Untrimmed hats classified under paragraph 314 were held dutiable under paragraph 409. Ornaments composed in chief value of artificial silk, classified under paragraph 391, were held dutiable by similitude as ornaments of cotton (par. 322). Protests sustained in part. Thomass *v.* United States (1 Ct. Cust. Appls., 86; T. D. 31107) and United States *v.* Cochran (3 Ct. Cust. Appls., 57; T. D. 32349) followed.

BEFORE BOARD 3, AUGUST 4, 1914.

No. 36246.—DALMATIAN SOUR CHERRIES.—Protests 742466, etc., of Rosenstein Bros. (New York). Opinion by Waite, G. A.

Dalmatian sour cherries, classified as dried fruit under paragraph 274, tariff act of 1909, were held dutiable as cherries under the same paragraph. Levy *v.* United States (5 Ct. Cust. Appls., —; T. D. 34130) followed.

No. 36247.—BOUILLON CUBES.—Protest 732966 of Meyer & Lange (New York). Opinion by Waite, G. A.

Bouillon cubes were held properly dutiable as nonenumerated manufactured articles under paragraph 480, tariff act of 1909, as claimed. Lang *v.* United States (4 Ct. Cust. Appls., 129; T. D. 33394) followed.

No. 36248.—UPHOLSTERY SAMPLES.—Protest 707794 of J. Neumann (New York). Opinion by Waite, G. A.

Samples of upholstery reported by the appraiser not to have been cut or slashed in any manner and fit for use as merchandise were claimed free of duty as samples of no commercial value. Protest overruled. Badische *v.* United States (4 Ct. Cust. Appls., 374; T. D. 33535) noted.

No. 36249.—MARBLE—SCULPTURES.—Protest 703035 of Austin, Baldwin & Co., protests 721316, etc., of Wm. Baumgarten & Co., and protests 690021 and 694695 of Kronfeld, Saunders & Co. (New York), and protests 533549, etc., of S. & G. Gump Co. (San Francisco). Opinions by Waite, G. A.

Various articles of marble classified under paragraph 112, tariff act of 1909, were claimed dutiable as sculptures (par. 470). Protest 622044 sustained in part; all other protests overruled.

No. 36250.—Artistic Antiquities.—Protest 722438 of American Express Co. (New York). Opinion by Waite, G. A.

Protest sustained as to certain merchandise claimed free of duty as artistic antiquities under paragraph 717, tariff act of 1909.

No. 36251.—Rotten Onions—Compliance with Regulations—Notice.—Protest 723584 of Produce Distributors Co. (Seattle).

Waite, *General Appraiser*: Question arises in this case over the importation of 350 crates of onions. It is claimed by the importers that a certain percentage of this shipment had rotted, and that therefore an allowance should be made under the first part of subsection 22, section 28, tariff act of 1909. That statute provides that no allowance shall be made for shortage or nonimportation caused by decay except under regulations prescribed by the Secretary of the Treasury. The Secretary, under authority vested in him, prescribed the regulation known as T. D. 30923, which provides that—

In order to obtain an allowance on account of shortage or nonimportation caused by decay, destruction, or injury to imported fruit, under the said provisions of law, the importers shall, within 48 hours after the arrival of the importing vessel, give notice in writing to the collector of customs of their intention to claim such allowance.

This regulation refers only to "fruit." We understand, however, it is intended to cover the provision in the statute for "fruit or other perishable articles," and in T. D. 30816, it was specifically extended by the Secretary to "onions."

It appears in the case at bar, without contradiction, that this vessel arrived on Friday, May 23, 1913, at 5.35 p. m. It is conceded that the notice to the collector of claim for allowance was dated and filed on May 26. The importers' attorney has proceeded upon the theory that Sunday having intervened, that day could be deducted from the time which actually elapsed, and his contention is that deducting Sunday the notice was timely. He has cited no law to justify his claim. We know of no law which justifies deducting Sunday in a case of this kind. At least part of Saturday was a business day, and notice could have been filed Saturday. We conclude therefore that the regulation has not been complied with. The protest is overruled.

No. 36252.—Commissions.—Protests 421168, etc., of C. W. R. Ford & Co. (San Francisco). Opinion by Waite, G. A.

Protests overruled as to an item of commissions claimed erroneously assessed with duty.

No. 36253.—Live Snails.—Protests 684084–43628, etc., of American Express Co. (Chicago). Opinion by Waite, G. A.

Live snails were held dutiable as nonenumerated unmanufactured articles under paragraph 480, tariff act of 1909, as claimed. De Jonghe *v.* United States (5 Ct. Cust. Appls., —; T. D. 34189) followed.

No. 36254.—Proof of Vinegar.—Protest 700183 of W. P. Southworth Co. (Cleveland). Opinion by Waite, G. A.

Protest overruled as to vinegar claimed to have been assessed upon the basis of too high a proof.

No. 36255.—Weight of Pine-Cone Nuts.—Protest 702370 of L. Amendola (New York). Opinion by Waite, G. A.

It is claimed in this case that duty should have been assessed on the weight of the nuts alone rather than on the combined weight of the cone and nuts. Protest sustained. Abstract 26085 (T. D. 31757) followed.

No. 36256.—Protests Dismissed.—Protest 730552 of Baltimore & Ohio Railroad Co. (Baltimore). Opinion by Waite, G. A.

Protest dismissed upon stipulation of counsel.

No. 36257.—PROTESTS OVERRULED.—Protests 722330, etc., of Asia Co. (Los Angeles), protests 698091, etc., of W. R. Straats et al. (San Francisco), and protest 715184 of M. Furuya Co. (Seattle). Opinions by Waite, G. A.

Protests unsupported; overruled.

No. 36258.—HOUSEHOLD EFFECTS—CHILD'S CRIB.—Protest 723882 of William C. Carey (Buffalo). Opinion by Hay, G. A.

Protest sustained as to a child's crib claimed to be free of duty as household effects under paragraph 520, tariff act of 1909.

No. 36259.—BONES—CLERICAL ERROR.—Protests 726850, etc., of F. B. Vandegrift & Co. (Philadelphia). Opinion by Hay, G. A.

Bones from which the ends have been cut and the marrow and extraneous matter removed were held properly classified under paragraph 480, tariff act of 1909. Abstract 35560 (T. D. 34440) followed. A further claim of clerical error was overruled on the authority of United States *v.* Swedish Produce Co. (4 Ct. Cust. Appls., 223; T. D. 33437), United States *v.* Wyman (4 Ct. Cust. Appls., 264; T. D. 33485), and G. A. 7476 (T. D. 33590).

No. 36260.—SHORTAGE—MATTINGS.—Protest 707415 of F. H. Shallus (Baltimore). Opinion by Hay, G. A.

Protest overruled as to a claim for shortage in mattings imported from Japan.

No. 36261.—RELIQUIDATION—Protest 729224 of A. McCormick & Co. (San Juan).

HAY, *General Appraiser:* This is the second time this case has been before the board. Certain fish were entered by the importers on December 21, 1912. The collector liquidated the entry on January 13, 1913, assessing duty on the merchandise at 30 per cent under the provisions of paragraph 270, tariff act of 1909. On January 25 a protest was filed claiming that the merchandise was dutiable at three-fourths of 1 per cent per pound under paragraph 273. The collector allowed this protest, and on January 27, 1913, reliquidated the entry accordingly. On March 31, 1913, the Treasury Department refused to approve his action and directed that the protest be forwarded to the Board of General Appraisers. On December 19, 1913, the Board of General Appraisers, in a well-considered opinion by Judge Sullivan, held that the protest was improperly transmitted to the board and dismissed the same. The collector thereupon, on December 26, 1913, again reliquidated the entry, assessing duty at 30 per cent, as in the original liquidation. Against this last liquidation this protest was filed.

The collector of customs is a statutory officer, and whatever act he performs must be performed in accordance with the law of Congress. His statutory direction providing for the reliquidation of an entry is to be found in section 21 of the act of June 22, 1874, which reads as follows:

SEC. 21. That whenever any goods, wares, and merchandise shall have been entered and passed free of duty, and whenever duties upon any imported goods, wares, and merchandise shall have been liquidated and paid, and such goods, wares, and merchandise shall have been delivered to the owner, importer, agent, or consignee, such entry and passage free of duty, and such settlement of duty shall, after the expiration of one year from the time of entry, in the absence of fraud and in the absence of protest by the owner, importer, agent, or consignee, be final and conclusive upon all parties.

This statute has many times been held to be a statute of limitations. As such it limits the collector's right to reliquidate in the absence of fraud or a protest filed, to within "one year from the time of entry." The question has been many times considered by this board and by the courts. Cassel *v.* United States (146 Fed., 146; T. D. 27116). The protest is therefore sustained and the collector directed to reliquidate the entry assessing duty at three-fourths of 1 cent per pound.

(T. D. 34699.)

Accounting for moneys withheld at the source by disbursing officers from income payments to individuals—Special-deposit account.

[Circular No. 33.]

TREASURY DEPARTMENT,
OFFICE OF COMPTROLLER OF THE TREASURY,
Washington, D. C., August 11, 1914.

To disbursing officers, auditors of the Treasury Department, and others concerned:

1. All disbursing officers of the United States, under whatever title they disburse Government funds, are required to act as agents of the Government in withholding at the source the tax levied by the act of October 3, 1913 (38 Stat., 166–181), upon the incomes of individuals. (See sec. 2, par. E, p. 170.)

2. Moneys withheld on account of income tax will be accounted for by each disbursing officer in his special-deposit account as a distinct classification thereof, in a separate column of the special-deposit account current. (See 19 Comp. Dec., 442; 20 *id.*, 479.)

3. The amounts withheld should be clearly shown in the pay roll or voucher of the disbursing officer's regular account on which salary or other payment is made, either in a separate column of "Deductions" or under "Remarks," and charge will be made against the proper appropriation for the full amount due each individual, including the amount of the income tax. Credit for said full amount will be asked for and given by the accounting officers of the Treasury, if the item be otherwise correct, upon a sufficient showing that the disbursing officer has taken up said amount of income-tax deduction in each individual case and charged himself therewith in his special-deposit account.

4. The amounts withheld will be deposited with the Treasurer of the United States to the official credit of the special-deposit account of the disbursing officer in the following manner:

The disbursing officer will draw his check, bearing the symbol number of his regular account, in favor of the Treasurer of the United States, to be deposited to the credit of his special-deposit account. The appropriation or appropriations chargeable will be entered on the check under the words "Object for which drawn." This check will be forwarded to the Treasurer of the United States, who will charge the amount in the officer's regular account and credit a like amount in the officer's special-deposit account, for which a duplicate certificate of deposit will be mailed to the officer as his receipt.

5. The amounts withheld will be scheduled upon a "Schedule of receipts and deposits" (special-deposit account), which will show the date of receipt, from whom received, purpose or classification of

receipt, amount received, and the number and date of certificate of deposit given by the Treasurer. Where income-tax collections form the only class of special-deposit moneys carried by a disbursing officer, the purpose or classification column may be omitted, the classification being shown in the heading of the form.

6. Where an amount has been withheld and the individual subsequently claims exemptions or deductions authorized by law, or claims that the amounts have been improperly withheld, in whole or in part, the disbursing officer, if refunder is authorized, may make refund to said individual by drawing a check bearing the symbol number of his special-deposit account in favor of the individual from whom withheld upon the Treasurer of the United States. Said refundments will be scheduled upon a "Schedule of refundments," which will show the date of refundment, to whom refunded, purpose for which refunded, and check number and amount of refundment. No voucher in support of refundments will ordinarily be required by the accounting officers other than the schedules and checks.

7. Remittance to the proper collector of internal revenue will also be by check bearing the symbol number of the disbursing officer's special-deposit account in favor of the collector, drawn on the Treasurer of the United States. The remittance will be accounted for by entry made on the debit side of the disbursing officer's special-deposit account current for the period in which the remittance payment is made, showing the number and date of the remittance check in the stub and the amount thereof in the income-tax column. If the amounts withheld for a given calendar year are correct, said amounts will equal the amount of the assessment made by the Commissioner of Internal Revenue, and the drawing of the remittance check should clear the income-tax account for that year. The original or a certified copy of the notice of assessment from the collector must accompany the special-deposit account for the period in which the remittance is made.

8. In case of the death, resignation, or transfer of a disbursing or collecting officer his special-deposit funds, including income-tax moneys, will be duly transferred to his successor, taking the latter's receipt therefor. Upon the production of said receipt and of evidence that the successor has taken up and charged himself in his special-deposit account with the balances of the various special-deposit classifications contained in his predecessor's last account submitted, due credit will be given by the accounting officers of the Treasury to the late accountable officer, and the latter's special-deposit account at his late station, if otherwise correct, will be closed.

9. The special-deposit account of a disbursing or collecting officer will be examined and audited by the proper auditor having juris-

diction by law over said officer's accounts, with the same care, thoroughness, and procedure as in case of his regular account, except that the settlement of an account need not be certified by the auditor to the Division of Bookkeeping and Warrants nor a copy furnished to heads of departments: *Provided*, That no exception shall be taken or disallowance made by an auditor in connection with income-tax moneys withheld by a disbursing officer where a proper accounting is made of the amounts withheld, in accordance with the provisions of this circular, and the disbursing officer charges himself (credits the United States) in his special-deposit account with the full amount withheld and assessed against him, as shown by the notice of assessment filed with his account, and credits himself (debits the United States) with the remittance to the collector of said assessment.

10. All disbursing and collecting officers receiving moneys embraced within the definition of special deposits given herein and in 19 Comp. Dec., 442, and 20 Comp. Dec., 479, whether income tax or otherwise, who do not account for same through the medium of a special-deposit account, will, unless differently authorized by law or Treasury regulation, apply to the Treasurer of the United States for permission to open such an account, will handle and account for said moneys as special deposits apart from their regular accounts, as herein provided for, and will submit their special-deposit accounts at the same time with their regular accounts, monthly or quarterly, as the case may be, to the proper auditor for examination and settlement.

11. The forms necessary to carry out the requirements of this circular should be prepared by the proper administrative officers and submitted (in duplicate) to the Comptroller of the Treasury for approval.

GEO. E. DOWNEY, *Comptroller.*

Approved:

BYRON R. NEWTON,

Acting Secretary of the Treasury.

(T. D. 34700.)

Invoices.

Instructions relative to invoicing merchandise under the provisions of the Executive order of May 28, 1913 (T. D. 34542), amending the consular regulations.

TREASURY DEPARTMENT, *August 12, 1914.*

SIR: In reply to a number of inquiries as to the method of invoicing merchandise under the provisions of the Executive order of May 28, 1913, published in T. D. 34542, the department has held as follows:

(1) Is it necessary to give the names of the ultimate purchasers in the United States of merchandise shipped to an agent or branch house for distribution or shipped to the purchasing importer?

Without passing upon the question as to whether the law requires the name of the purchaser to be stated in the invoice, the department for the present will not require the names of the several purchasers to be stated on the invoice when the merchandise has been sold to a number of purchasers at a price delivered in the United States and shipped to an agent or branch house of the seller for delivery to the ultimate purchaser in the United States, but the names of such purchasers must be furnished to the collector or appraiser whenever requested.

(2) Is the requirement that the foreign market price and the American selling price must be stated upon the consular invoice to apply to a case where the goods are actually bought by an importer who is other than an agent or branch house of the shipper and who in turn has sold them to various purchasers?

The law and the regulations require that the price paid or agreed to be paid by the purchaser shall be stated in the invoice in every case when the goods have been purchased or agreed to be purchased by a purchaser in this country, whether shipped direct to the purchaser or to an agent or branch house of the seller. The market value may also be stated, but it is not required. A purchaser in this country who has in turn sold the merchandise should state the price paid to the foreign seller and it is not necessary to state the price which he receives or is to receive for the goods.

(3) Is the provision of paragraph 664 of the amended consular regulations requiring the use of Form 138 unlimited in its scope, or is it intended to apply to cases other than where the American selling price is relevant or material, as set forth in paragraph L of section 3?

Merchandise must be invoiced upon the "purchased" form whenever the price or amount to be paid or remitted therefor is fixed or determined at the time or prior to the shipment of the merchandise, regardless of whether the merchandise is to be appraised under paragraph L or not.

Respectfully, WM. P. MALBURN,
(64064.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34701.)

Wire gauge.

The tariff act of 1913 eliminates the term "wire gauge," except in paragraph 114 in relation to steel strips. The use of the American wire gauge (Brown & Sharpe) authorized where applicable.

TREASURY DEPARTMENT, *August 13, 1914.*

SIR: I have to refer to your letter of the 16th ultimo, reporting on a communication from the Secretary of Commerce, recommending

the adoption of a single gauge for all wires, and suggesting the use of the American wire gauge (Brown & Sharpe).

The tariff act of October 3, 1913, eliminated, with one exception, the term "wire gauge" and substituted therefor diameters expressed in decimals of 1 inch. The exception noted appears in paragraph 114 of the tariff act in relation to steel strips. The department's instructions of September 14, 1875 (T. D. 2439), and August 2, 1893 (T. D. 14263), authorizing the use of the Birmingham gauge for the gauging of all wires (not strips), have been nullified by the elimination of wire gauge in the existing tariff act in connection with wires.

The department has this day advised the Secretary of Commerce that it perceives no objection to the adoption for the use of the customs service, in so far as it may be applicable, of the American wire gauge (Brown & Sharpe), and the use of such gauge under the existing tariff act is hereby authorized where the same may be applicable.

Respectfully, WM. P. MALBURN,
(4774.) *Assistant Secretary.*

APPRAISER OF MERCHANDISE, *New York.*

(T. D. 34702.)

Certificates—Articles under bond.

Consular certificates prescribed by paragraph 8 of T. D. 33806 not required where value of articles imported under subsection 4 of paragraph J of section 4, tariff act of October 3, 1913, does not exceed $100. If valued at over $100 certificate should be furnished.

TREASURY DEPARTMENT, *August 13, 1914.*

SIR: I have the honor to refer to your letter of May 18 last, transmitting a copy of a dispatch from the American consul general at large, dated Toronto, Canada, April 22, 1914, requesting to be informed whether the consular certificate prescribed by paragraph 8 of T. D. 33806, showing the purpose for which articles entered under subsection 4, paragraph J, of section 4 of the tariff act of October 3, 1913, are to be used while in this country, should be furnished when the value of such articles does not exceed $100.

As a consular invoice is not required for imported merchandise valued at $100 or less, this department is of the opinion that the consular certificate prescribed by paragraph 8 of T. D. 33806 should not be required for articles intended for entry under subsection 4 of paragraph J if the value of such articles does not exceed $100.

In the case of shipments valued at over $100, however, such certificate should be furnished, although it need not be executed as a

separate document, but may be written in the space below the shipper's declaration on the consular invoice.

I will thank you to instruct American consular officers accordingly

By direction of the Secretary.

Respectfully, WM. P. MALBURN,
(83711.) *Assistant Secretary.*

The SECRETARY OF STATE.

(T. D. 34703.)

Withdrawals from warehouse—Parcel post.

Merchandise entered for warehousing may be withdrawn for exportation by parcel post.

TREASURY DEPARTMENT, *August 15, 1914.*

SIR: The department is in receipt of your letter of the 3d instant, requesting to be advised whether merchandise imported by parcel post and entered for warehousing may be subsequently withdrawn for exportation by parcel post and the bond canceled upon the deposit of the package in the post office under supervision of the customs officers.

In reply, I have to state that goods may be withdrawn for exportation by registered parcel post, provided the packages are inspected and mailed under the supervision of customs officers, the receipt therefor to be delivered to the customs officer for filing at the customhouse with his return of the inspection. A waiver of the right to withdraw such packages from the mails should be indorsed on each package and signed by the party in whose name the receipt is made and the inspector in making his return should state that such waiver was so indorsed.

Where the amount of the duty involved is less than $25, the evidence of landing abroad required by article 268 of the Customs Regulations of 1908 will not be required. Where, however, the amount of the duty involved is $25 or more, the entry should not be liquidated until either the receipt of the foreign addressee is filed or until the receipt of a certificate from the postal authorities in this country to the effect that notice has been received from the foreign postal authorities that the packages were duly received at destination and delivered to the addressees.

Respectfully, WM. P. MALBURN,
(25885.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New Orleans, La.*

(T. D. 34704.)

Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, Somerville, and Hay.

BEFORE BOARD 1, AUGUST 7, 1914.

No. 36262.—SHELL BOXES—MIRRORS.—Protest 743196 of Hawley & Letzerich (Galveston). Opinion by Sullivan, G. A.

Small cardboard articles made to imitate bureaus, having a small mirror and drawers below, also small cardboard boxes without mirrors, the tops studded with shells and having a pincushion in the center covered with red material, classified as glass mirrors under paragraph 109, tariff act of 1909, were held dutiable as manufactures of shell (par. 464).

No. 36263.—BRASS FASTENERS—MILLINERY ORNAMENTS.—Protest 676860 of B. E. Levy (New York). Opinion by Sullivan, G. A.

A fastener consisting of two pieces, the one fitting into the other but not snapping, made of brass set with imitation precious stones, classified at 85 per cent ad valorem under paragraph 448, tariff act of 1909, was held dutiable under the provision in the same paragraph for millinery ornaments. Abstract 34316 (T. D. 34026) distinguished. Protest claiming under paragraph 427 overruled.

No. 36264.—IMITATION PEARL BEADS.—Protests 614672-41321, etc., of Marshall Field & Co. (Chicago), and protests 693014, etc., of Cohn & Rosenberger et al. (New York). Opinions by Sullivan, G. A.

Lorsch *v.* United States (5 Ct. Cust. Appls., —; T. D. 34132) followed as to imitation pearl beads temporarily strung.

No. 36265.—ROSARIES.—Protest 730431 of P. J. Kennedy & Sons (New York). Opinion by Sullivan, G. A.

Rosaries composed in chief value of wood beads were held dutiable as manufactures of wood under paragraph 176, tariff act of 1913. Rosaries composed of coco beads and seed beads were held dutiable as nonenumerated manufactured articles (par. 385). Rosaries composed of metal beads were held dutiable as manufactures of metal (par. 167). Protest sustained in part.

No. 36266.—JEWELRY.—Protest 402987 of F. H. Shallus (Baltimore), protests 585355 etc., of A. T. Lewis & Son Dry Goods Co. (Denver), protest 441291 of Cohn & Rosenberger, protests 737463, etc., of Wm. E. Flory & Co. et al., and protests 701949, etc., of Lippmann, Spier & Hahn (New York), protests 493562, etc., of Koons, Wilson & Co. et al. (Philadelphia), and protest 598185 of H. Nordlinger's Sons (Providence). Opinions by Sullivan, G. A.

Articles commonly known as jewelry were held dutiable accordingly under paragraph 448, tariff act of 1909. Cohn *v.* United States (4 Ct. Cust. Appls., 378; T. D. 33536) followed.

No. 36267.—PROTESTS OVERRULED.—Protest 717322-44979 of G. W. Sheldon & Co. (Chicago), protests 667556, etc., of Halle Bros. Co. et al., and protest 709498 of H. Killinder (Cleveland), protests 595625, etc., of Morris European & American Express Co. et al. (New York), and protests 739730, etc., of Syndicate Trading Co. et al. (New York, etc.). Opinions by Sullivan, G. A.

Protests unsupported; overruled.

No. 36268.—PICKLED HERRINGS.—Protests 516461, etc., of Chas. F. Mattlage & Sons et al. (New York). Opinion by Brown, G. A.

On the authority of United States *v.* Haaker (4 Ct. Cust. Appls., 471; T. D. 33884) pickled herrings were held dutiable under paragraph 272, tariff act of 1909.

No. 36269.—FISH IN TINS.—Protests 573078, etc., of Meyer & Lange et al. (New York). Opinion by Brown, G. A.

United States *v.* Miller (5 Ct. Cust. Appls., —; T. D. 34443) followed as to fish in tins.

BEFORE BOARD 2, AUGUST 7, 1914.

No. 36270.—ALUMINUM IN SHEETS.—Protests 695608, etc., of Amerman & Patterson (New York). Opinion by Fischer, G. A.

Circles of aluminum classified under paragraph 172, tariff act of 1909, were held dutiable as manufactures of metal (par. 199). Universal Shipping Co. *v.* United States (4 Ct. Cust. Appls., 245; T. D. 33479) followed.

No. 36271.—PULL CARDS, LITHOGRAPHIC.—Protests 695572, etc., of T. D. Downing & Co. et al. (Boston). Opinion by Fischer, G. A.

So-called pull cards or valentines, lithographically printed, die-cut, and embossed, classified at 20 cents per pound, were held dutiable at 9½ cents per pound under paragraph 412, tariff act of 1909. Protests sustained in part.

No. 36272.—EMBROIDERY MACHINES.—Protest 557490-40024 of G. W. Sheldon & Co. (Chicago). Opinion by Fischer, G. A.

Protest overruled as to certain machines classified under paragraph 199, tariff act of 1909, and claimed entitled to free entry as embroidery machines (par. 197).

BEFORE BOARD 3, AUGUST 7, 1914.

No. 36273.—DURESS.—Protests 624245-41779, etc., of Burley & Tyrrell Co. (Chicago). Opinion by Waite, G. A.

Protests overruled claiming duress. Colonial Import & Export Co. *v.* United States (5 Ct. Cust. Appls., —; T. D. 34190) followed.

No. 36274.—ADDITIONAL DUTY—REGULATIONS.—Protest 715821-44992 of Herman Reach & Co. (Chicago).

WAITE, *General Appraiser:* Protestants ask in this case to be relieved from the payment of additional duties levied under subsection 7, section 28, tariff act of 1909, because the appraised value exceeded the entered value. The merchandise is burlaps or Hessian cloth, which arrived at the port of Boston and from thence was sent to Chicago under immediate transportation entry. It was imported from Calcutta, and on entry was appraised at 4 annas per 100 yards above the entered value. The importers did not take an appeal for reappraisement. They do not dispute but that the appraised value was the wholesale market price, as required by the statute, to be found as the basis of assessment of duty. They ask, however, to be relieved from the additional duty because of the nonfulfillment, as they allege, of the requirement of a regulation promulgated by the Secretary of the Treasury, said regulation being known as Article 880 of the Customs Regulations of 1908. This article is as follows:

ART. 880. *Value of burlaps and bags.*—The American consul general at Calcutta has been instructed by the Secretary of State to mail each week to the United States appraisers at the naval office ports a certificate showing the market values of burlaps and bags on each day of that week and to post each week in a conspicuous place in his office a notice showing the daily market values as certified by him.

The market value of such burlaps and bags on the date of sailing of the importing vessel should be certified by the appraiser at a naval-office port upon the immediate transportation entry, or a copy may be made of the consular certificate and forwarded with said entry, and, in case of entry at other ports, information as to the market value should be requested from the nearest naval-office port. Notices of such values as certified by the consul shall also be posted each week, for the information of importers, in the office of the appraiser at all naval-office ports.

The first paragraph of this regulation, it will be observed, is merely a recital of what had been done by the Secretary of State. It is there stated that the American consul general at Calcutta has been instructed by the Secretary of State to mail each week to the United States appraisers at the naval-office ports a certificate showing the market value of burlaps and bags on each day of that week. Upon this recital, the Secretary of the Treasury gives certain instructions as to what shall be done with the information so received, to wit: That the said market value shall be certified by the appraiser upon the immediate-transportation entry, or he may make a copy of the consular certificate and forward with the entry; and, further, that notices of such values as certified by the consul shall also be posted each week, for the information of importers, in the office of the appraiser at all naval-office ports.

In our view, this is merely a voluntary act on the part of the Secretary of the Treasury intended to give the importer the benefit of such information as he has received pursuant to the action of the Secretary of State. We do not think the Secretary of the Treasury can be held responsible for the accuracy of these reports, or for anything more than he actually receives. It would appear in this case that the burlap imported was not of the usual and ordinary kind, but was what is termed "double calendered." The information received from the consul general does not seem to have specifically covered this grade of goods. It does appear, however, from the evidence in the case that in the trade the value of these goods can be ascertained from the basic price of the ordinary goods mentioned in the report. This is not disputed by the importers. The whole basis of the claim is that the report transmitted to them should have included this specific kind of burlap; that not having included it, they should be excused from the payment of additional duty, notwithstanding the fact that the value upon which duty was assessed was the true market value. We think their claim is without merit. The protest is therefore overruled.

No. 36275.—Value—Variance Between Invoice Description and Goods.—Protest 726016 of Scaramelli & Co. (Boston).

Waite, *General Appraiser:* Protestants in this case imported what was described in the invoice as "146 cases of cipolline." The broker who appears to have made the entry testified at the hearing that he inquired of the importer as to the nature of the goods and was told they were Italian onions. He thereupon entered the goods as "146 cases of small onions." The importation was made under the law of 1909, which provides (par. 261) that onions shall pay a duty of 40 cents per bushel. The appraiser found that the invoice called for "146 cases of cipolline." The board has held cipolline to be dutiable as a vegetable in its natural state. (Abstract 33201; T. D. 33668.) The importation was so returned by the appraiser and assessed, as provided by paragraph 269 of the law of 1909 for vegetables in their natural state, at 25 per cent ad valorem.

The appraiser appraised the goods, adding 4 liras per 100 kilos to the entered price to make market value, thus fixing the price at 40 liras per 100 kilos. The appraised value was affirmed by the Board of General Appraisers on appeal to reappraisement.

The importers now claim that under a broad interpretation of article 1044 of the Customs Regulations of 1908 the appraiser should have "short shipped" the onions which were entered and assessed the cipolline found. The material part of the protest is as follows:

The reasons for objection are that under the tariff act of 1909 the merchandise is dutiable as cipolline under paragraph 269 of the tariff act of 1909, but that the

examiner has erred in adding to invoice value entered, whereas he should have appraised goods found and short shipped goods entered, as provided for in article 1044, Customs Regulations of 1908, as the merchandise entered does not correspond with the merchandise found.

Said article 1044 reads as follows:

ART. 1044. *Erroneous description.*—The declaration of an importer as to the value of any goods is binding upon him; but if, upon examination, they are found not to correspond with the description given in the invoice, duties will be assessed on the goods actually found; and if the discrepancy appear conclusively to be the result of a mistake and not of an intent to defraud, no proceeding for forfeiture will be taken.

We are of the opinion that said article has no application in this case. There is no question raised but that the goods imported were cipolline, properly described in the invoice. The value found in the invoice was used as the value on entry by the broker; the presumption is that had he entered the goods as cipolline the same value would have been given. The appraising officer and collector do not seem to have acted under any misapprehension, and we fail to see how the importer can profit as to the amount of duty to be paid by his own error. His claim is that any appraisement made in this case, which may be used as the basis for additional duty, was of onions, a commodity which was not imported; therefore the cipolline must be treated as though no value was given on entry; that the value found by the appraising officer was no basis for additional duty, as, in fact, the value of the cipolline was not raised. This claim, however, we think is without foundation. As above stated, the only merchandise which came under the view of the Government officials was the merchandise described in the invoice, which was, in fact, cipolline. The appraisal was made upon cipolline; and if the value found by the appraisal exceeded the entered value, additional duty should be levied, as provided by the statute.

The question of short shipment does not arise in this case either in fact or in theory. A case of short shipment would arise only where the goods found were less than those described in the invoice.

The protest is overruled.

No. 36276.—TUNNY FISH AND PREPARED VEGETABLES IN TINS.—Protest 725535 of Larini & Co. (New York). Opinion by Waite, G. A.

A preparation of tunny fish, capers, olives, and vinegar, put up in small sealed tins, classified as prepared vegetables under paragraph 252, tariff act of 1909, found to be composed in chief value of fish, was held dutiable as fish in tins (par. 270), as claimed.

No. 36277.—HAM, ROLLED—SAUSAGE.—Protest 724285 of Menzel & Co. (New York). Opinion by Waite, G. A.

Rolled ham classified under paragraph 284, tariff act of 1909, was claimed free of duty as sausages—bologna (par. 667). Protest overruled.

No. 36278.—SPEARMINT LOZENGES—CONFECTIONERY.—Protests 719602, etc., of Wm. A. Foster & Co. (New York). Opinion by Waite, G. A.

Spearmint and pepsin tablets containing a small quantity of active pepsin, classified as confectionery under paragraph 219, tariff act of 1909, were claimed dutiable as a medicinal preparation (par. 65). Protests overruled, the proof not showing the article to be used *chiefly* as a medicinal preparation. Abstract 34471 (T. D. 34069) and Abstract 19065 (T. D. 29050) cited.

No. 36279.—FRUITS IN OWN JUICES—SUBMISSION ON SAMPLES.—Protest 684184 of M. Hachiya Co. et al. (Portland, Oreg.). Opinion by Waite, G. A.

Merchandise classified as fruits in their own juices under paragraph 274, tariff act of 1909, was claimed entitled to free entry as fruits in brine (par. 571). Protest, submitted on samples without other evidence, overruled.

No. 36280.—Artistic Antiquities.—Protests 516362, etc., of S. & G. Gump Co. (San Francisco). Opinion by Waite, G. A.

Certain artistic antiquities were held entitled to free entry under paragraph 717, tariff act of 1909. Protests sustained in part.

No. 36281.—Five Per Cent Discount.—Protests 728676, etc., of A. Lorsch & Co. et al. (New York). Opinion by Waite, G. A.

G. A. 7540 (T. D. 34246) followed as to five per cent discount under subsection 7, paragraph J, section 4, tariff act of 1913. Protests overruled.

No. 36282.—Coconut Oil—"Cocolado."—Protest 726048 of Kohn Boldemann Co. (San Francisco). Opinion by Waite, G. A.

"Cocolado," palm-kernel oil, classified as a refined deodorized coconut oil under paragraph 293, tariff act of 1909, was claimed free of duty as nut oil or oil of nuts (par. 639). Protest overruled. Abstract 36023 (T. D. 34609) noted.

No. 36283.—Protests Overruled.—Protests 730111, etc., of T. D. Downing & Co. et al. (Boston), protests 725151-45421, etc., of Bermingham & Seaman Co. (Chicago), protests 723922, etc., of Alexander & Baldwin (Honolulu), and protests 717349, etc., of North American Mercantile Co. et al., and protest 698407 of Okada-Ichida Co. (San Francisco). Opinions by Waite, G. A.

Protests unsupported; overruled.

Before Board 1, August 11, 1914.

No. 36284.—Jewelry—Brooches and Pendants—Toys.—Protest 687194 of Baltimore & Ohio Railroad Co. (Baltimore). Opinion by Sullivan, G. A.

Brooches and pendants of flimsy and cheap construction, classified as jewelry under paragraph 448, tariff act of 1909, were claimed dutiable as toys (par. 431). Protest overruled. United States *v.* Bernard, Judae & Co. (5 Ct. Cust. Appls., —; T. D. 34328) and United States *v.* Kraemer (5 Ct. Cust. Appls., —; T. D. 34474) followed.

No. 36285.—Jewelry—Imitation Jet.—Protests 528773, etc., of M. J. Corbett & Co. (New York). Opinion by Sullivan, G. A.

On the authority of Cohn *v.* United States (4 Ct. Cust. Appls., 378; T. D. 33536) merchandise commonly known as jewelry was held dutiable accordingly under paragraph 448, tariff act of 1909. United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506) followed as to imitation jet. G. A. 7129 (T. D. 31089) followed as to articles in chief value of metal.

No. 36286.—Protests Overruled.—Protests 326135, etc., of American Express Co. et al. (St. Louis). Opinion by Sullivan, G. A.

Protests unsupported; overruled.

No. 36287.—Fish in Tins.—Protests 445539, etc., of Acker, Merrall & Condit Co.; protests 715891, etc., of Jed Frye & Co. et al., and protests 415015, etc., of Meyer & Lange et al. (New York), protests 414909, etc., of H. M. Gidden et al. (New York and Seattle), and protest 449084 of Metropolitan Grocery Co. (Seattle). Opinions by Brown, G. A.

United States *v.* Smith (4 Ct. Cust. Appls., 70; T. D. 33312) and United States *v.* Miller (5 Ct. Cust. Appls., —; T. D. 34443) followed as to fish in tins. Protests sustained in part.

BEFORE BOARD 3, AUGUST 11, 1914.

No. 86288.—FERN BALLS—NONENUMERATED ARTICLES.—Protests 708398, etc., of Henry & Lee (New York).

WAITE, *General Appraiser:* The sample presented at the hearing in this case is of an item invoiced as "fern balls." The witness stated that the fern balls are constructed of wild fern roots gathered in the forest and assembled for the purpose of making these articles. The other articles described on the invoice are made in the same way.

These goods were assessed as nursery or greenhouse stock under paragraph 264, tariff act of 1909. They are claimed to be dutiable as unenumerated manufactured articles under paragraph 480.

An inspection of the sample before us, to wit, the fern ball, reveals the fact that it consists of an inner bundle or core of moss. It is held together in a somewhat spherical form by a twine or cord manufactured from a fibrous plant. About this are wound the fern roots in regular order, so as to cover the whole surface of the ball of moss. The fern roots are held on the surface of the ball of moss by means of twine, which is passed through the center of the fern ball and extends from one pole to the other, having 10 different strings passing over the surface of the ball like parallels of longitude on a sphere, finally terminating in a loop on one side, by means of which the ball is suspended when in place as an ornament. The object is to saturate the moss with water, which assists in the growth of the fern roots, thus producing a green fern ball.

There is no evidence showing that these are necessarily greenhouse or nursery stock; they may very well be manufactured by those not engaged in that business. While they may be considered a part of the merchandise dealt in by greenhouses and nurserymen, we are of the opinion that they should not be classified as the collector has classified them in this case. While the material for the most part is in a crude and natural condition, a part of the ball as it appears before us is of a manufactured article, to wit, the twine or string with which it is bound and suspended; and the care, labor, and manipulation necessary to form it, constitute it, in our judgment, a manufactured article. We therefore so hold, sustaining the protests.

No. 86289.—DAMAGED BEANS—NONIMPORTATION.—Protests 704956, etc., of J. C. Hunt (New York).

WAITE, *General Appraiser:* In protest 704956 it is claimed that 166 bags of beans out of an importation of 500 bags were damaged by coming in contact with arsenic in the hold of the vessel in which imported and that duty should not be assessed on such quantity; and in protest 704957 the same claim is made regarding 436 bags out of a total shipment of 1,000 bags of beans.

No testimony has been taken, but various reports and letters form a part of the record, and briefs have been filed by both sides. The facts appear to be as follows:

The beans were imported on July 16, 1912, on steamship *Venezia*, the importation being covered by two entries. The bags claimed on were originally reported to have been condemned by the board of health, and in the original liquidation allowance was made for same, but according to letters in the record this order of condemnation was subsequently rescinded on the condition that the beans should be washed and cleaned satisfactorily under their supervision. The collector reliquidated, assessing duty. A letter from the office of the surveyor, dated March 14, 1913, and signed by the discharging inspectors in charge of this steamship, makes the following statement after setting forth the facts as above stated:

Before returning the vessel we went to the board of health office in Center Street and were assured that the condemnation was final. We filed our return September 10, 1912, at which time we deposited a left-over cargo list with the guard on the pier

and filed a copy with the fifth division. On this list these beans were all entered with the notation, "Condemned by board of health, to be destroyed." March 10, on receipt of reference, we went to the pier and saw the assistant superintendent, Mr. Rex Pollock, who informed us that Messrs. Elwell had sent their lawyer to the board of health, whom he persuaded to rescind their condemnation on condition that the beans were washed and cleaned satisfactorily under their supervision.

We also discovered that, under this arrangement, the beans had all been delivered, with the exception of the 166 bags which are the subject of the reference. These 166 bags (which are covered by warehouse permit for union stores) are still on dock, uncleaned.

The protests read as follows:

Said merchandise was condemned by the board of health in the Government custody and has never been delivered to the importers thereof. It is therefore a nonimportation. Said merchandise is not "perishable," and for this and other reasons subsection 22 of section 28 is not applicable (note G. A. 7228 and cases therein cited, affirmed T. D. 32458).

If subsection 22 of section 28 is held to be applicable, it is claimed that the provisions of said section and the regulations of the Secretary of the Treasury relating thereto have been substantially complied with.

It is further claimed that the collector and other customs officials have not permitted us to take delivery of the merchandise and that the action of the board of health in condemning said merchandise was final and conclusive upon the importers, and the collector, having adopted the said condemnation and refused delivery of the merchandise, can not now reliquidate the entry and demand duty upon so much as has been condemned. It is further claimed that duty should only be assessed under the original liquidation in this case.

It will eliminate some questions raised if it may be determined that beans are not perishable goods. These were dry shell beans. It has been held that macaroni is not perishable. Abstract 26203 (T. D. 31788), affirmed in United States *v.* Pastene (3 Ct. Cust. Appls., 164; T. D. 32458). We are of the opinion that these goods were not perishable. That being so, the question of allowance under any of the provisions of subsection 22, section 28, tariff act of 1909, need not be discussed, nor the proceedings to take advantage of the provision of such statute.

The only remaining question, then, is as to whether this is a nonimportation. If not perishable, then the rule of Lawder *v.* Stone (187 U. S., 281) applies, and allowance as for a nonimportation should be made if the beans here, as was the case with the fruit there, arrived in the United States in such damaged condition as to be utterly worthless and of no pecuniary value.

In the case at bar it appears that the goods were considered worthless by the importer for the reason that they had been stored with arsenic, some of which had gotten out of the packages and become mixed with the beans. On the theory they were destroyed in that way, the board of health in the first instance condemned the beans, but on being interviewed by the carriers consented that the goods might be entered if they were properly washed. It appears from the record in the case, there being no testimony, that the 436 bags out of the shipment of 1,000 bags were so treated and delivered. The 166 bags out of the shipment of 500 bags were, so far as the record shows, left upon the dock. There is a statement in one of the papers in the case that an offer of 3½ cents per pound was made for these beans properly cleaned. We think, under the circumstances of this case, as they appear to us from the papers on file which may be considered to constitute the record upon which the case is submitted, that there has not been such a destruction as is contemplated in order to absolve the importer from paying duty. It does not appear that the beans were entirely worthless; in fact, it would appear they were of value. Because they were unfitted for human food it does not follow they were not valuable for seed or for animal consumption. We are of the opinion that the importer is not sustained by the record in the case. The protests are therefore overruled.

No. 86290.—Refund on Goods Reshipped by Mistake.—Protest 702549 of E. Jolles (New York).

Waite, *General Appraiser:* This case arises over the importation of some six bags of mushrooms. It appears they were imported on a vessel of the Hamburg-American Line; five of the bales were left on the dock and one was taken to the Government stores. By some mistake the five bales left on the dock were reloaded on a vessel of the same line and taken out of the country. Claim is here made for refund of duty paid on the five bags.

It appears that the goods were entered and imported by one Edward Jolles, for the account and risk of the Standard Grocery Co., and it was stated at the hearing that the "Standard Grocery Co. and Jolles are the same party." Being the importers and having paid the duty, they would have a right to make claim for refund of excessive duties paid, if any such duties were paid. But they have assumed to assign their claim to the party who has filed the protest, one W. Benkert. Question is raised by Government counsel as to whether Benkert, the assignee of the claim, had a right to file the protest. We do not deem it necessary to decide this point. It appears that the goods were brought into this country, and so far within the limits of the port as to be landed upon the dock. The duty therefore became payable and the importers liable therefor. Our conclusion is that no claim for refund can be maintained by the importers, and certainly not by their assignee. It appears that the Hamburg-American Co. admitted their liability in the matter so far as to pay for the mushrooms. If they were liable for the mushrooms, it is difficult to see why they were not also liable for the duty. At all events no refund, in our judgment, should be ordered. The protest is overruled.

No. 86291.—Commissions—Duress.—Protests 57338b, etc., of Harrington & Goodman et al. (Philadelphia). Opinion by Waite, G. A.

Protests overruled on the authority of Abstract 35946 (T. D. 34571) as to the claim that an item of commission was included in the entered value through duress.

No. 86292.—Protest, Sufficiency—Commissions—Duress.—Protests 108104, etc., of Lippincott, Johnson Co. (Philadelphia).

It is here contended that certain protests claiming that a charge of commission is a nondutiable item should be considered together with the entries as claiming duress.

Waite, *General Appraiser:* * * * We do not think a protest can be helped out in that way and made to conform to the requirement of the statute with reference to protests, which states that the protestant shall set forth in his protest "distinctly and specifically * * * the reasons for his objections" to the collector's decision. We are aware that the courts have held that inartificially drawn protests are sometimes permissible, as in the case of a defective description of the goods involved, and have permitted the identification of the goods to be made by reference to the invoice and entry. We think such cases, however, are distinguishable from this, wherein the claim upon which the protest rests is not set out in the protest, but if found at all must be found by reference to some other document in the record. We therefore hold that these protests do not make the claim of duress. They claim that the item of commission is a nondutiable item, but inasmuch as it has been included by the importers in the entered value, duty is assessable thereon, in view of the rule that duty shall not be assessed upon an amount less than the entered value. The protests enumerated above are therefore overruled for this reason.

Those protests in which the claim of duress is made, being the remainder of the protests here scheduled, are governed, we think, by the decision in Abstract 35946 (T. D. 34571). Following that decision, we overrule the protests. Note also Van Ingen *v.* United States (4 Ct. Cust. Appls., 320; T. D. 33520) and Colonial Import & Export Co. *v.* United States (5 Ct. Cust. Appls, —; T. D. 34190).

No. 36293.—SHOYU—SOY SAUCE.—Protests 642082, etc., of Yabuno Bros. et al. (San Francisco). Opinion by Waite, G. A.

Protests sustained on the authority of Abstract 36224 (T. D. 34677) as to shoyu, classified as a sauce under paragraph 253, tariff act of 1909, and claimed dutiable as a nonenumerated manufactured article (par. 480).

No. 36294.—ARTISTIC ANTIQUITIES.—Protests 691150, etc., of F. L. Roberts & Co. (Boston). Opinion by Waite, G. A.

Certain articles of furniture were held entitled to free entry as artistic antiquities under paragraph 717, tariff act of 1909.

No. 36295.—ANTIQUE VELVET.—Protests 708560, etc., of Benguiat & Keiessy (New York). Opinion by Waite, G. A.

Protests overruled claiming certain specimens of velvet to be entitled to free entry as artistic antiquities under paragraph 717, tariff act of 1909.

No. 36296.—MODEL.—Protest 723024 of American Express Co. (New York). Opinion by Waite, G. A.

Wooden models for parts of automobile engines, classified as manufactures of wood under paragraph 215, tariff act of 1909, were held entitled to free entry as models (par. 629).

No. 36297.—CANNED PEPPERS.—Protest 729599 of Lang & Stroh Co. (San Francisco). Opinion by Waite, G. A.

Protest overruled as to red peppers in tins classified as prepared vegetables under paragraph 252, tariff act of 1909. Austin *v.* United States (4 Ct. Cust. Appls., 313; T. D. 33519) followed. G. A. 7590 (T. D. 34667) noted.

No. 36298.—PROTESTS OVERRULED.—Protests 670819, etc., of Austin, Nichols & Co. et al. (New York). Opinion by Waite, G. A.

Protests unsupported; overruled.

No. 36299.—WOOD PULP—PAPER—CANADIAN RECIPROCITY.—Protests 624792–41608, etc., of Kirchheimer Bros. Co. (Chicago), and protests 696345–4420, etc., of Geo. Wm. Rueff et al. (New Orleans and Chicago). Opinions by Somerville, G. A.

American Express Co. *v.* United States (4 Ct. Cust. Appls., 146; T. D. 33434) followed as to wood pulp and paper from Sweden. Protests sustained in part.

(T. D. 34705.)

Payment of salaries and compensation.

[Circular No. 35.]

TREASURY DEPARTMENT,
OFFICE OF COMPTROLLER OF THE TREASURY,
Washington, D. C., August 18, 1914.

To officers of the Treasury Department:

The following information is given for computing annual or monthly compensation for services rendered the United States.

The act of Congress approved June 30, 1906 (34 Stat., 763), provides as follows:

SEC. 6. Hereafter where the compensation of any person in the service of the United States is annual or monthly the following rules for division of time and computation of pay for services rendered are hereby established:

Annual compensation shall be divided into twelve equal installments, one of which shall be the pay for each calendar month; and in making payments for a fractional part of a month one-thirtieth of one of such installments, or of a monthly compensation, shall be the daily rate of pay. For the purpose of computing such compensation and for computing time for services rendered during a fractional part of a month in connection with annual or monthly compensation, each and every month shall be held to consist of thirty days, without regard to the actual number of days in any calendar month, thus excluding the thirty-first of any calendar month from the computation, and treating February as if it actually had thirty days. Any person entering the service of the United States during a thirty-one-day month and serving until the end thereof shall be entitled to pay for that month from the date of entry to the thirtieth day of said month, both days inclusive; and any person entering said service during the month of February and serving until the end thereof shall be entitled to one month's pay, less as many thirtieths thereof as there were days elapsed prior to date of entry: *Provided*, That for one day's unauthorized absence on the thirty-first day of any calendar month one day's pay shall be forfeited.

This act is construed as requiring that—

1. Each calendar month shall consist of 30 days, and the computation of salary shall be by each month separately, one-twelfth of an annual salary constituting the compensation for each month.

2. One-thirtieth of a monthly installment of salary is to be allowed for each day of service from the 1st to the 30th, inclusive. The last day of February counts as three days of service for pay purposes (two days in leap years).

3. The 31st day of a month enters into the computation of salary only where there is *one day's* absence in a nonpay status on that day—that is, absence in a nonpay status did not occur also on the 30th. For such absence on the 31st one day's pay is forfeited.

Reference is made to 20 Comp. Dec., 772 and 867.

Department circulars No. 46 of 1904 and No. 67 of 1906 are superseded.

GEO. E. DOWNEY, *Comptroller.*

Approved:

WM. P. MALBURN,
Acting Secretary of the Treasury.

(T. D. 34706.)

Semicircular plates for making iron piles.

Appeal directed from decision of the Board of United States General Appraisers of June 19, 1914, Abstract 35945 (T. D. 34571), involving the classification of semicircular plates punched with rivet holes intended for making iron piles for a wharf imported under the act of 1909.

TREASURY DEPARTMENT, *August 17, 1914.*

SIR: I have to acknowledge the receipt of your letter of the 4th instant inviting attention to the decision of the Board of the United States General Appraisers of June 19, 1914, Abstract 35945 (T. D.

34571), involving the classification of certain semicircular plates punched with rivet holes, intended for making iron piles for a wharf, which the board held were properly dutiable at the rate of four-tenths of 1 cent per pound under paragraph 121 of the tariff act of 1909.

In view of the importance of the issue and in accordance with your recommendation, you are hereby authorized to file an application, in the name of the Secretary of the Treasury, with the United States Court of Customs Appeals for a review of the board's decision, in accordance with the provisions of subsection 29 of section 28 of the act of August 5, 1909.

Respectfully, ANDREW J. PETERS,
(102638.) *Assistant Secretary.*
ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 34707.)

Mail importations—Method of rewrapping packages.

TREASURY DEPARTMENT, *August 18, 1914.*

To collectors and other officers of the customs:

In rewrapping foreign mail packages other than registered packages, after examination, they will be readdressed to the postmasters at offices of delivery, and the envelopes containing the mail entries accompanying them will be tied in such a manner as to conceal the original addresses, the string to be passed through the eyelet of the envelope containing the mail entries.

In rewrapping registered packages, after examination, the envelope containing the mail entries will not be wrapped so as to conceal the address. Such packages will, however, be stamped "Collect duty before delivery."

(60935.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 34708.)

Asafetida.

T. D. 31097, dated December 10, 1910, revoked.

TREASURY DEPARTMENT, *August 18, 1914.*

To collectors and other officers of the customs:

At the suggestion of the Secretary of Agriculture, T. D. 31097 of December 10, 1910, permitting entry of asafetida containing 35 per cent or more of alcohol-soluble material, is hereby revoked.

(81260.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 34709.)

Common carrier.

Authorizing discontinuance of the bonded route of the Ryan Elevator & Forwarding Co. for the transportation of dutiable merchandise.

TREASURY DEPARTMENT, *August 19, 1914.*

SIR: Acknowledging the receipt of your letter of the 7th instant, with which was inclosed a communication from the Ryan Elevator & Forwarding Co., I have to inform you that the bond dated May 4, 1909, of said company, approved May 17, 1909 (T. D. 29754), for the transportation of dutiable merchandise, is hereby discontinued, and the fact and date should be noted by you on the copy of said bond on file in your office, which copy should be retained without cancellation to meet any liability which may have accrued thereunder. * * *

Respectfully, ANDREW J. PETERS,
(29024.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Buffalo, N. Y.*

(T. D. 34710.)

Drawback on underwear.

Drawback on men's underwear manufactured by the Union Mills (Inc.), of Hudson, N. Y., with the use of woven material manufactured in part from imported cotton yarn.

TREASURY DEPARTMENT, *August 18, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on men's underwear manufactured by the Union Mills (Inc.), of Hudson, N. Y., with the use of woven material manufactured in part from imported cotton yarn.

A manufacturing record shall be kept, which will show, in addition to the usual import data, the lot number and date of manufacture of each lot of underwear manufactured for exportation with benefit of drawback, the number of pieces of each kind and size produced, and the quantity of woven material appearing therein. A sworn abstract from such manufacturing record shall be filed with each drawback entry.

The allowance for imported cotton yarn shall not exceed 21 per cent of the weight of the woven material appearing in the exported garments, as shown by the abstract from the manufacturing record.

The sworn statement of the manufacturers, dated July 22, 1914, is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(101409.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34711.)

Common carrier.

Discontinuance of the bonded route of the Trinity & Brazos Valley Railway Co. as a common carrier for the transportation of dutiable merchandise.

TREASURY DEPARTMENT, *August 17, 1914.*

SIR: The department is in receipt of your letter of the 8th instant in relation to the desire of the Trinity & Brazos Valley Railway Co. to discontinue its bonded route for the transportation of dutiable merchandise, the bond covering which was approved July 26, 1912.

As it appears from your letter that all the requirements of the regulations have been complied with on the part of the said company, the discontinuance of the route is authorized, and the fact and date should be noted by you on the copy of the bond now in your possession, which should be retained without cancellation to meet any liability which may have accrued thereunder.

Respectfully, ANDREW J. PETERS,
(49609.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Galveston, Tex.*

(T. D. 34712.)

Instructions under Executive order regarding radio communication in the enforcement of neutrality.

TREASURY DEPARTMENT, *August 20, 1914.*

To collectors and other officers of the customs:

The appended copy of instructions in regard to radio communication, issued by the Secretary of the Navy, is published for the information and guidance of all customs officers and others concerned.

(102574.) ANDREW J. PETERS, *Assistant Secretary.*

Instructions for officers charged with enforcing the President's Executive order regarding radio communication.

NAVY DEPARTMENT, *August 6, 1914.*

No cipher or code messages are permitted to be transmitted to or received from radio ship or shore stations of belligerent nations by any Government or commercial radio station situated in the United States or its possessions or in territory under the jurisdiction of the United States, except cipher to or from United States officials.

No cipher or code radio messages will be permitted to be sent from any radio station in the United States via foreign radio stations if destined to a belligerent.

Radio messages containing information relating to operations, material, or personnel of armed forces of any belligerent nation will be considered as unneutral in character and will not be handled by radio stations under the jurisdiction of the United States.

In general, the censoring official will assure himself *beyond doubt* that no message of an unneutral character is allowed to be handled.

In order to insure that censors may in all cases be informed thoroughly and correctly as to the contents of radio messages coming under their censorship, they will

demand, when necessary, that such messages be presented for their ruling in a language that is understandable to them.

In case of doubt as to the character of a message, it should be stopped and its contents, with full explanation of details, be forwarded to the department (Operation) by telegraph for instructions as to the proper procedure to follow.

JOSEPHUS DANIELS.

(T. D. 34713.)

Drawback on essential oil of cloves.

Drawback on essential oil of cloves manufactured by the Dodge & Olcott Co., of New York, N. Y., with the use of imported crude cloves.

TREASURY DEPARTMENT, *August 20, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on essential oil of cloves manufactured by the Dodge & Olcott Co., of New York, N. Y., with the use of imported crude cloves.

A manufacturing record shall be kept, which will show, in addition to the usual import data, the lot number and date of manufacture of each lot of essential oil of cloves manufactured for exportation with benefit of drawback, the quantity and value of cloves used, the quantity of essential oil of cloves obtained, the quantity of waste incurred, and the value of such waste, if any. A sworn abstract of such manufacturing record shall be filed with each drawback entry.

The allowance shall not exceed the quantity of imported cloves used in the manufacture of the exported essential oil of cloves, as shown by the sworn abstract from the manufacturing record, the allowance to be reduced according to the quantity of imported material which the value of the waste will replace.

The sworn statement of the manufacturers, dated July 27, 1914, is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(102115.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34714.)

Drawback on incandescent mantles.

T. D. 30973 of October 4, 1910, amended with respect to the quantities of the imported ramie thread used in the manufacture of incandescent mantles.

TREASURY DEPARTMENT, *August 20, 1914.*

SIR: The department's regulations of October 4, 1910 (T. D. 30973), providing for the payment of drawback on incandescent mantles manufactured by the Block Light Co., of Youngstown, Ohio, with the use of imported ramie thread, are hereby amended to provide that the allowance shall not exceed the quantities of imported ramie thread used in the manufacture of the exported mantles as shown by

the sworn statement of the manufacturers dated July 24, 1914, which is transmitted herewith for filing in your office.

Supplemental sworn statements covering incandescent mantles manufactured by the said company with the use of imported ramie thread may be filed, and upon verification of the same drawback on the mantles covered thereby may be allowed.

Respectfully, ANDREW J. PETERS,
(34636.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34715.)

Drawback on automobile clocks and chronodometers.

Drawback on automobile clocks and chronodometers manufactured by Ernest C. Meyer, of Cleveland, Ohio, with the use of imported watches.

TREASURY DEPARTMENT, *August 20, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on automobile clocks and so-called chronodometers manufactured by Ernest C. Meyer, of Cleveland, Ohio, with the use of imported watches.

The allowance shall not exceed one imported watch for each automobile clock or chronodometer exported.

The sworn statement of the manufacturer, dated August 8, 1914, is transmitted herewith for filing in your office.

Supplemental schedules covering other styles of clocks and chronodometers may be filed, and upon verification of the same drawback may be allowed on the articles covered thereby.

Respectfully, ANDREW J. PETERS,
(103500.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Cleveland, Ohio.*

(T. D. 34716.)

Drawback on dynamite.

Drawback on dynamite, dynamite powder, and dynamite gelatin manufactured with the use of imported refined glycerin, or with the use of refined glycerin produced from imported crude glycerin.

TREASURY DEPARTMENT, *August 21, 1914.*

To collectors and other officers of the customs:

On the exportation of dynamite, dynamite powder, and dynamite gelatin, manufactured either wholly with the use of imported refined glycerin or wholly with the use of refined glycerin manufactured wholly from imported crude glycerin, a drawback shall be allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the general drawback regulations (T. D. 31695 of June 16, 1911),

equal in amount to the duties paid on the glycerin used, less 1 per cent of such duties, subject to the following special regulations:

At the end of each period of one month beginning on the first and ending with the last day thereof, during which dynamite, dynamite powder, or dynamite gelatin is manufactured for exportation with benefit of drawback, an abstract from a manufacturing record, which shall be kept, shall be filed in the office of the collector of customs at the headquarters port of the customs district wherein the factory is situated, which abstract shall be in the following form:

Abstract from the manufacturing record of ....., located at ....., covering dynamite, dynamite powder, and dynamite gelatin, manufactured with the use of wholly imported refined glycerin or with the use of refined glycerin wholly produced from imported crude glycerin, from ..... to .....

STOCK RECORD OF REFINED GLYCERIN.

Imported refined glycerin.								Refined glycerin produced from imported crude glycerin.			
Number of import entry.	By whom imported.	Name of import vessel.	Date of importation.	Where imported.	Whence imported.	Quantity.	Lot number.	Name of refiner.	Location of refinery.	Quantity.	Refiner's serial production number.

NITROGLYCERIN MANUFACTURING RECORD.

Date of mix.	Quantity of refined glycerin used.	Lot number of refined glycerin used.	Serial production number of refined glycerin used.	Quantity of nitroglycerin produced.	Monthly serial production number.	Quantity of glycerin recovered from wash waters, etc., and disposition of same.

DYNAMITE, DYNAMITE POWDER, AND DYNAMITE GELATIN MANUFACTURING RECORD.

Character of explosives manufactured.	Date of mix.	Monthly serial production number of nitroglycerin used.	Quantity of nitroglycerin used.	Quantity of dynamite, powder, or gelatin produced.	Serial production number of dynamite, powder, or gelatin produced.	Percentage of nitroglycerin.	Size of cartridges.	Net weight dynamite, powder, or gelatin in case of cartridges.	Number of cartridges packed in case.

I, the .....,
(Superintendent or other officer in charge of factory.)
of ....., located at ....., do solemnly and truly declare that each of the statements contained in the foregoing abstract is true to the best of my knowledge and belief and can be verified by the factory records, which have been kept in accordance with T. D. 34716, and which are at all times open to inspection by duly authorized officers of the customs.

The abstract from the nitroglycerin manufacturing record shall be liquidated on the basis of the total quantity of refined glycerin used and the total quantity of nitroglycerin produced during the period covered thereby, taking into account the recovery of any glycerin from wash waters, etc., which is again used during the period covered by the abstract.

The allowance may equal the quantity of imported refined glycerin, or refined glycerin produced from imported crude glycerin, used in the manufacture of the dynamite, dynamite powder, or dynamite gelatin exported, as shown by the abstract from the manufacturing record prescribed above, with an addition in the case of refined glycerin produced from imported crude glycerin to compensate for waste in refining, as shown by the abstract from the refiner's record on file at the headquarters port of the district in which the refinery is located, or by the extract of such abstract issued by the collector of such district.

(101281.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 34717.)

Drawback on refined glycerin.

Drawback on refined glycerin manufactured wholly from imported glycerin.

TREASURY DEPARTMENT, *August 21, 1914.*

To collectors and other officers of the customs:

On the exportation of refined glycerin manufactured wholly from imported crude glycerin there shall be allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the general drawback regulations (T. D. 31695 of June 16, 1911), a drawback equal in amount to the duties paid on the imported crude glycerin used in the manufacture thereof, less 1 per cent of such duties, subject to the following special regulations. A manufacturing record shall be kept which shall show the following data in the form provided:

Stock in storage tanks and in process at beginning and end of period.

Beginning.			End.		
Imported crude glycerin and glycerol content.		Glycerol content of sweet waters, etc., from imported crude glycerin.	Imported crude glycerin and glycerol content.		Glycerol content of sweet waters, etc., from imported crude glycerin.
Pounds of crude.	Glycerol content.	Pounds.	Pounds of crude.	Glycerol content.	Pounds.
	Predicated on glycerol content of all imported crude glycerin dumped during preceding period.			Predicated on glycerol content of all imported crude glycerin dumped during period covered by abstract.	

Imported crude received.

Number of import entry.	By whom imported.	Name of importing vessel.	Date of importation.	Where imported.	Whence imported.	Quantity.	Glycerol content of glycerin.	Refiner's raw number.

Imported crude glycerin used and refined glycerin produced therefrom.					Waste.
Quantity of crude glycerin dumped in storage tanks.	Date of dumping.	Disposition of sweet waters, etc., from.	Quantity of refined glycerin of each grade produced.	Glycerol content of refined glycerin of each grade.	Total waste in refining.

At the end of each manufacturing period of one, two, or three months, as the manufacturer may elect, there shall be filed in the office of the collector of customs at the headquarters port of the customs district in which the refinery is located a sworn abstract from such refinery record. In the abstract from the manufacturing record herein provided for, the data shown in the record as to the glycorol content of each lot of imported glycerin used need not be shown in detail, but such abstract must show the average glycorol content of all imported crude glycerin used during the period.

The abstract shall be accompanied by an affidavit by the superintendent or other officer in charge of the refinery, which shall be in the following form:

I, ..., the ..... at the factory of ....., located at ....., do solemnly and truly declare that each of the statements contained in the foregoing abstract is true to the best of my knowledge and belief, and can be verified by the factory records which have been kept in accordance with T. D. 34717, and which are at all times open for inspection by duly authorized officers of the customs.

Such abstract shall, in the discretion of the collector, be verified by the special agent.

The refined glycerin produced during each period of manufacture shall be given a serial production number, which number shall be marked on each of the containers in which the refined glycerin is stored.

In the liquidation of the abstract, the allowance may equal the quantity of imported crude glycerin used in the manufacture of the refined glycerin produced, as shown by the abstract.

If refined glycerin of more than one grade is produced during a period, such as those known to the trade as commercially pure glycerin, dynamite glycerin, and light yellow or refined tinted glycerin, in the liquidation of the abstract the waste shall be distributed

between the various grades of refined glycerin according to the quantity and purity of each.

If the actual net waste in refining imported crude glycerin alone can not be shown, due to intermingling of the sweet waters, drum washings, etc., of both domestic and imported crude glycerin, or for any other reason, the allowance shall be limited to the weight of the refined glycerin.

Upon application by the manufacturer extracts from such abstracts from the manufacturing record shall be issued to collectors of customs at other ports. Certificates of manufacture and delivery shall be executed in the form prescribed in the general drawback regulations (T. D. 31695), except that such certificates of manufacture and delivery shall show, in addition to the usual data, the serial production number of the refined glycerin covered thereby.

(101358–3.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 34718.)

Neutrality.

Instructions supplementing those in T. D. 34693 of August 10, 1914, relative to the observance of neutrality.

[Telegram.]

TREASURY DEPARTMENT, *August 20, 1914.*

To collectors of customs (all sea and lake ports):

Department's instructions, 10th instant (T. D. 34693), are hereby supplemented as follows:

1. Collectors of customs are charged with the duty of preventing violations of the neutrality laws, but may call upon the Revenue-Cutter Service or officers of the Navy or Army for such force and assistance as may be necessary.

2. Vessels of war will not be permitted to take on coal or other supplies without permission from the collector of customs.

3. Collectors will apply to officers of the Revenue-Cutter Service or Navy for advice as to the quantity of coal and other supplies that may be taken by such vessel.

4. All matters concerning radio communication involving neutrality shall be referred to the commander of a naval radio station or of a naval vessel at your port. If there be no such station or vessel at your port you will follow instructions of Navy Department issued August 6, 1914, and if necessary to enforce these instructions you will seal up the wireless room and apparatus of any merchant vessel of a belligerent power, the seals to remain until the vessel's departure.

5. In case of war vessels you will notify their commanders that same can not be used while in port.

W. G. MCADOO, *Secretary.*

(T. D. 34719.)

Drawback on clothing.

Drawback on clothing manufactured by the B. Kuppenheimer & Co., of Chicago, Ill., with the use of various imported materials.

TREASURY DEPARTMENT, *August 19, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on clothing manufactured by Messrs. B. Kuppenheimer & Co., of Chicago, Ill., with the use of imported fabrics, canvas, linings, buttons, and other materials.

A manufacturing record shall be kept which will show, in addition to the usual data, the lot number and date of manufacture of each lot of clothing manufactured for exportation with the benefit of drawback, the number of articles of clothing of each kind and size produced, the quantity of imported material of each kind used, the loss by shrinkage, the quantity of waste, the value of such waste, and the values of the imported materials used. An abstract of such manufacturing record shall be filed with each drawback entry.

The allowance shall not exceed the quantity of imported materials used in the manufacture of the exported clothing as shown by the abstract of the manufacturing record, the allowance to be reduced according to the quantity of imported materials which the value of the waste will replace.

The sworn statement of the manufacturers, dated August 5, 1914, is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(102637.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Chicago, Ill.*

(T. D. 34720.)

Drawback on medicinal and toilet preparations.

Drawback on medicinal and toilet preparations manufactured by the Sanitol Chemical Laboratory Co., of St. Louis, Mo., with the use of domestic tax-paid alcohol and various imported materials.

TREASURY DEPARTMENT, *August 20, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on medicinal and toilet preparations manufactured by the Sanitol Chemical Laboratory Co., of St. Louis, Mo., with the use of domestic tax-paid alcohol and various imported materials.

A manufacturing record shall be kept which will show the lot number and date of manufacture of each lot of medicinal and toilet preparations manufactured for exportation with benefit of drawback,

the kind of preparation manufactured, the quantity and proof of domestic tax-paid alcohol, and the quantities of imported material of each kind used, the quantity of preparation obtained, the quantity of waste resulting, and the quantity of alcohol recovered from such waste, if any. A sworn abstract from such manufacturing record shall be filed with each drawback entry.

The allowance shall not exceed the quantities of domestic tax-paid alcohol and imported materials appearing in the exported preparations, with an addition to compensate for actual waste, as shown by the sworn abstract from the manufacturing record.

The sworn statements of the manufacturers, dated March 3, 1914, are transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(68770.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *St. Louis, Mo.*

(T. D. 34721.)

Drawback on magnetos.

Drawback on magnetos manufactured by the Hendricks Novelty Co., of Indianapolis, Ind., with the use of imported magnets and with the use of imported ball bearings.

TREASURY DEPARTMENT, *August 20, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on magnetos manufactured by the Hendricks Novelty Co., of Indianapolis, Ind., with the use of imported magnets or with the use of imported ball bearings.

The allowance shall not exceed the number of imported magnets or ball bearings appearing in the exported magnetos, as shown by the sworn statement of the manufacturers, dated August 4, 1914, which is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(102608.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Indianapolis, Ind.*

(T. D. 34722.)

Drawback on Cream of Wheat.

Drawback on Cream of Wheat manufactured by the Cream of Wheat Co., of Minneapolis, Minn., with the use of imported wheat farina.

TREASURY DEPARTMENT, *August 21, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on Cream of Wheat manufactured by the Cream of Wheat Co., of Minneapolis, Minn., with the use of imported wheat farina.

The allowance shall not exceed the net weight of the exported Cream of Wheat.

The sworn statement of the manufacturers, dated August 10, 1914, is transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on Cream of Wheat exported on or after July 2, 1914.

Respectfully, ANDREW J. PETERS,
(102510.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *St. Paul, Minn.*

(T. D. 34723.)

Drawback on almonds.

Drawback on sifted, cleaned, and graded almonds produced by Habicht, Braun & Co., of New York, N. Y., from almonds imported in bulk.

TREASURY DEPARTMENT, *August 22, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on sifted, cleaned, and graded almonds produced by Habicht, Braun & Co., of New York, N. Y., from almonds imported in bulk.

A record shall be kept which will show, in addition to the usual import data, the weight and value of each lot of imported almonds treated, the quantity of sifted, cleaned, and graded almonds produced, the quantities of valuable and worthless waste, and the value of the valuable waste. A sworn abstract from such record shall be filed with each drawback entry.

The allowance shall not exceed the quantity of imported almonds used in producing the exported sifted, cleaned, and graded almonds, as shown by the abstract from the manufacturing record, the allowance to be reduced according to the quantity of imported almonds which the value of the waste will replace.

The sworn statement of the producer, dated August 11, 1914, is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(102632.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34724.)

Drawback on witch-hazel.

T. D. 30974 of October 5, 1910, extended to cover witch-hazel manufactured with the use of domestic tax-paid alcohol by the Gould Witch-Hazel Co., successors to the Merrimac Witch-Hazel Co., of Windham, N. H.

TREASURY DEPARTMENT, *August 22, 1914.*

SIR: The department's regulations of October 5, 1910 (T. D. 30974), providing for the payment of drawback on witch-hazel

manufactured by the Merrimac Witch-Hazel Co., of Windham, N. H., with the use of domestic tax-paid alcohol, are hereby extended to cover witch-hazel manufactured with the use of domestic tax-paid alcohol by the Gould Witch-Hazel Co., of Windham, N. H., successors to the Merrimac Witch-Hazel Co.

The sworn statement of the Gould Witch-Hazel Co., dated August 17, 1914, is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(80390.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 34725.)

Publications.

Publications of the International Bureau of Telegraphic Union at Berne, Switzerland, free of duty under paragraph 425, tariff act of 1913.

TREASURY DEPARTMENT, *August 22, 1914.*

SIR: This department is in receipt of your letter of the 31st ultimo, in which you call attention to the list of radio stations of the world, published by the International Bureau of the Telegraphic Union at Berne, Switzerland, and to the fact that under the wireless-telegraph regulations of the United States a copy of such list must constitute a part of the equipment of every radio station open to general public service, in order to comply with section 2 of the act of June 20, 1910. You request to be advised whether such lists can be delivered free of duty.

In reply, I have to state that in the opinion of the department the publications of the said International Bureau are entitled to admission free of duty under paragraph 425 of the act of October 3, 1913.

Respectfully, ANDREW J. PETERS,
(98274.) *Assistant Secretary.*

The COMMISSIONER OF NAVIGATION,
Department of Commerce.

(T. D. 34726—G. A. 7595.)

Additional duty.

JURISDICTION OF APPRAISER OVER PACKING CHARGES.

It being the duty of the collector to fix the packing charges, any action of the appraiser relative thereto must be held to be either advisory or extra-official. The addition of packing charges, therefore, does not raise the *per se* value, and hence the provisions of subsection 7 of section 28 of the tariff act of 1909 do not apply.—United States *v.* Spingarn Bros. (5 Ct. Cust. Appls., —; T. D. 34002).

United States General Appraisers, New York, August 21, 1914.

In the matter of protest 716213 of Binney & Smith Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers; WAITE, G. A., not participating).

HAY, *General Appraiser:* The merchandise in this case is invoiced as "1,200 sacs talc poudre," and entered at 2,820 francs. The en-

tered value did not include the value of the sacks in which the talc was imported, and the appraiser "advanced to make market value, for 1,200 bags at franc 1 per bag." The collector treated this as an advance of the *per se* value of the merchandise, and applied the provisions of subsection 7, section 28, of the act of 1909.

Two questions are raised by the protestants. One is that additional duty was illegally assessed and is broad enough to cover any claim of illegality that might be involved in the assessment of additional duty in this case. Another is that there was a clerical error in omitting from the invoice the value of the bags in which the merchandise was imported. The claim of clerical error, within the rule laid down by the Court of Customs Appeals in United States *v.* Swedish Produce Co. (4 Ct. Cust. Appls., 223; T. D. 33437), from an examination of the papers in the case is not sustained. As to the first claim, it is contended that the omission of the value of the bags, though properly added by the collector, must not, under the decision of the Court of Customs Appeals in United States *v.* Spingarn Bros. (5 Ct. Cust. Appls., —; T. D. 34002), be treated as increasing the appraisement so as to authorize the levying of additional duty under subsection 7.

In United States *v.* Spingarn, *supra*, the Court of Customs Appeals held that the determination of packing charges upon entry of merchandise was a function of the collector and not of the appraiser. Without reviewing the statute cited or the reasons advanced in the opinion of the court in reaching this conclusion, but accepting it as the settled law, the merchandise in this case was not advanced in value. Additional duty such as the collector levied in this case is authorized by the following language of subsection 7, section 28, tariff act of 1909:

> * * * If the appraised value of any article of imported merchandise subject to an ad valorem duty or to a duty based upon or regulated in any manner by the value thereof shall exceed the value declared in the entry, there shall be levied, collected, and paid, in addition to the duties imposed by law on such merchandise, an additional duty of one per centum of the total appraised value thereof for each one per centum that such appraised value exceeds the value declared in the entry. * * *

It being the duty of the collector to fix the packing charges, the action of the appraiser relative thereto must be held to be either advisory or extra-official. The *per se* value of the merchandise as entered was not advanced by the appraiser. The addition of the packing charges, therefore, did not make the appraised value exceed the entered value. It follows that the provision of subsection 7, above quoted, does not apply in this case, and the collector's action in levying additional duty was without warrant of law.

At the time of the trial counsel for the Government moved to strike from the record a certain letter from the United States district attor-

ney which the collector had forwarded with the papers in the case. The letter in question has no bearing whatever upon the issues raised herein. It is therefore of no consequence to either the Government or the importers whether it remains as one of the papers in the case or is held to be no part of the record. If it were offered in evidence, it would be rejected. If it had been received in evidence, the motion to strike out would be granted; but as there is some doubt as to the board's power to change the record which the collector sends here, the motion to strike out is denied.

The protest is sustained and the collector directed to reliquidate the entry, omitting the additional duty.

(T. D. 34727.)

Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, Somerville, and Hay.

BEFORE BOARD 1, AUGUST 14, 1914.

No. 36300.—FISH IN OIL—FISH IN TINS.—Protests 676976, etc., of Quong Lee & Co. et al. (San Francisco).

BROWN, *General Appraiser:* The merchandise, as reported by the appraiser, consists of "fish in oil in tins over 70 cubic inches." It was classified under the clause in paragraph 270, act of 1909, reading, "all other fish (except shellfish) in tin packages, thirty per centum ad valorem."

It is claimed to be dutiable at one-half of 1 cent per pound under paragraph 272 as herrings, or at 1 cent per pound under the provision for mackerel, halibut, or salmon in paragraph 273.

No evidence was introduced in support of either of these two claims, nor to show the character of the fish; therefore the protests in that regard must be overruled.

It is further claimed to be dutiable at three-fourths of 1 cent per pound under paragraph 273 as "fish, fresh, smoked, dried, salted, pickled, frozen, packed in ice or otherwise prepared for preservation, not specially provided for in this section."

Assuming that the fish are prepared for preservation within the meaning of this language, and comparing this provision with the clause in paragraph 270 under which the merchandise was classified, the latter must be held to be more specific, for the reason that while they both include all kinds of fish the former is limited to such fish in tin packages.

In Loggie *v.* United States (137 Fed., 813; T. D. 26340) the United States Circuit Court of Appeals, First Circuit, held that the provision in paragraph 258 of the act of 1897 for "fish in packages containing less than one-half barrel" was more specific than that in paragraph 261 for "fish, fresh, * * * frozen, packed in ice, or otherwise prepared for preservation." The principle of the Loggie case seems to be controlling here.

At the hearing the importers' counsel requested that the official samples be examined by the chemist at the port of New York to determine whether the fish are packed exclusively in oil. This evidence is immaterial, as the presence or absence

of oil would have no bearing upon the applicability of the paragraphs in question, because the fish-in-oil provision only relates to tins of less than 70 cubic inches, and these tins are all over 70 cubic inches in cubic capacity.

The protests are therefore overruled.

No. 36301.—Fish in Tins.—Protests 430020, etc., of Basilea & Calandra et al., and protests 433976, etc., of P. Pastene & Co. et al. (New York). Opinions by Brown, G. A.

Protests sustained as to fish in tins on the authority of United States *v.* Miller (5 Ct. Cust. Appls., —; T. D. 34443).

Before Board 3, August 14, 1914.

No. 36302.—Algor Gum.—Protest 726322 of F. L. Roberts & Co. (Boston). Opinion by Hay, G. A.

Algor gum classified as a nonenumerated article under paragraph 480, tariff act of 1909, was held entitled to free entry as an article in a crude state used in dyeing or tanning (par. 499). Abstract 34560 (T. D. 34090) followed. G. A. 7589 (T. D. 34666) cited.

No. 36303.—Regalia.—Protest 726714-45083 of John P. Daleiden Co. (Chicago). Opinion by Hay, G. A.

Material out of which a church vestment is to be made was held not to be regalia within the meaning of paragraph 661, tariff act of 1909.

No. 36304.—Stone, Crushed.—Protests 729768, etc., of MacArthur Bros. Co. (Detroit). Opinion by Hay, G. A.

Stone crushed in a machine manufactured expressly for that purpose and separated into sizes through screens was held dutiable as a nonenumerated manufactured article under paragraph 385, tariff act of 1913, rather than free of duty as crude minerals (par. 549). United States *v.* Graser-Rothe (164 Fed., 205; T. D. 29240) and Rossman *v.* United States (1 Ct. Cust. Appls., 280; T. D. 31321) followed.

No. 36305.—Whetstones.—Protest 730522 of C. A. Johnson & Co. (New York). Opinion by Hay, G. A.

Protest overruled as to English blue whetstones and Water-of-Ayr whetstones classified as articles composed of mineral substances under paragraph 81, tariff act of 1913. United States *v.* Johnson (4 Ct. Cust. Appls., 104; T. D. 33375) followed.

No. 36306.—American Goods Returned.—Protest 730683-46747 of Feature Film Sales Co. (Chicago). Opinion by Hay, G. A.

A motion-picture film classified under paragraph 380, tariff act of 1913, was claimed entitled to free entry as American goods returned. Protest overruled, the regulations of the Secretary of the Treasury not having been complied with. McBride *v.* United States (1 Ct. Cust. Appls., 293; T. D. 31354) followed.

No. 36307.—Weight of Paper.—Protest 710315 of Ault & Wiborg Co. (New York). Opinion by Hay, G. A.

Protest overruled as to the weight of paper.

No. 36308.—Fitted Leather Cases.—Protests 622310, etc., of Hensel, Bruckmann & Lorbacher et al. (New York), and protests 492948, etc., of Gimbel Bros. et al. (Philadelphia and New York). Opinions by Hay, G. A.

Protests sustained in part as to fitted leather cases. United States *v.* Ovington (2 Ct Cust. Appls., 393; T. D. 32163) and United States *v.* Mark Cross Co. (4 Ct. Cust Appls., 274; T. D. 33489) followed.

No. 36309.—PROTEST BY WRONG PARTY.—Protest 726800 of Fook Hing (New York). Opinion by Hay, G. A.

Protest not made by owner, importer, consignee, or agent of the merchandise dismissed.

No. 36310.—PROTEST FILED TOO SOON.—Protest 730551 of Dennis Daigle (Portland, Me.). Opinion by Hay, G. A.

Protest filed before liquidation of the entry dismissed.

No. 36311.—PROTEST FILED TOO LATE.—Protest 732525 of Wm. Filene's Sons Co. (Boston). Opinion by Hay, G. A.

Protest dismissed, not having been filed in time.

BEFORE BOARD 1, AUGUST 18, 1914.

No. 36312.—FISH IN TINS.—Protests 516266-37889, etc., of R. B. Boak & Co. et al. (Chicago). Opinion by Brown, G. A.

United States *v.* Miller (5 Ct. Cust. Appls.,—; T. D. 34443) followed as to fish in tins. Protests sustained in part.

BEFORE BOARD 2, AUGUST 18, 1914.

No. 36313.—ARTIFICIAL SILK HATS—TRIMMED HATS.—Protests 161513, etc., of Leon Rheims Co., protests 376711, etc., of Marcel Schmitt et al., and protests 189919, etc., of John Zimmermann Co. et al. (New York). Opinions by Howell, G. A.

Trimmed hats the bodies of which are wholly or in chief value of straw or chip were held dutiable as trimmed hats under paragraph 409, tariff act of 1897, as claimed. Untrimmed hats composed in chief value of artificial silk or imitation horsehair were held dutiable by similitude as cotton wearing apparel (par. 314). Thomass *v.* United States (1 Ct. Cust. Appls., 86; T. D. 31107) and United States *v.* Cochran (3 Ct. Cust. Appls., 57; T. D. 32349) followed. Trimmed hats composed in part of metal were held dutiable under paragraph 193. United States *v.* Berlinger (167 Fed., 800; T. D. 29577) followed. A hat composed in chief value of feathers was held dutiable under paragraph 425. Legg *v.* United States (163 Fed., 1006; T. D. 29004) followed.

No. 36314.—TRIMMED STRAW HATS.—Protest 650000 of Joseph (New York), and protests 706355, etc., of John Wanamaker (Philadelphia). Opinions by Howell, G. A.

United States *v.* Lord & Taylor (4 Ct. Cust. Appls., 322; T. D. 33521) followed as to trimmed straw hats held dutiable under paragraph 422, tariff act of 1909. Protests sustained in part.

No. 36315.—PROTEST FEE.—Protest 731830 of M. Park Parker (New York). Opinion by Howell, G. A.

Protest overruled, the fee provided for in subsection N, section 3, tariff act of 1913, not having been paid.

No. 36316.—COTTON WEARING APPAREL IN PART OF LEVER LACE.—Protests 698580, etc., of American Express Co. et al. (Boston). Opinion by Howell, G. A.

Cotton wearing apparel either embroidered or composed in part of Lever lace was held properly classified under paragraph 350, tariff act of 1909. Altman *v.* United States (5 Ct. Cust. Appls., —; T. D. 34251) and Stiner *v.* United States (5 Ct. Cust. Appls., —; T. D. 34428) followed.

No. 86317.—Artificial Silk Ribbons.—Protest 723809–45204 of Marshall Field & Co. (Chicago). Opinion by Howell, G. A.

Certain ribbons classified as artificial silk under paragraph 405, tariff act of 1909, were held dutiable as composed in chief value of cotton (par. 349). Protest sustained in part.

No. 86318.—Spun Silk Yarns.—Protests 567602 and 641941 of Chas. Moebius (New York). Opinions by Howell, G. A.

Protests sustained claiming certain spun silk yarn to be dutiable according to the number of yarns in their dyed condition. G. A. 7295 (T. D. 32002) followed.

No. 86319.—Manila Hemp Lace—Packing Charges.—Protest 638057–42055 of Gage Bros. & Co. (Chicago). Opinion by Howell, G. A.

Merchandise classified as vegetable fiber trimmings under paragraph 349, tariff act of 1909, was held dutiable as manila hemp lace at 20 per cent ad valorem (par. 422). A claim that certain packing charges were not dutiable overruled, the record not showing whether the charges were incident to placing the merchandise in packed condition ready for shipment or whether they cover the cost of making the shooks into cases. Kraemer *v.* United States (4 Ct. Cust. Appls., 91; T. D. 33369) noted.

No. 86320.—Elastic Cords and Webbings.—Protests 570186, etc., of Calhoun, Robbins & Co. (New York). Opinion by Howell, G. A.

Elastic cords and webbings were held dutiable according to the component material of chief value under paragraphs 463, 349, and 401, respectively, tariff act of 1909. Protests sustained in part. Abstract 25606 (T. D. 31616) noted.

No. 86321.—Basket Bags.—Protest 731249 of American Importing Co. (Los Angeles) and protest 732753 of Ignaz Strauss & Co. (New York). Opinions by Howell, G.A.

Bamboo baskets lined with silk drawn together at the top, making a bag, classified as embroidered silk articles under paragraph 358, tariff act of 1913, were found not to be embroidered and held dutiable as a manufacture in chief value of silk (par. 318). Claim overruled on the authority of G. A. 7540 (T. D. 34246) as to 5 per cent discount.

No. 86322.—Protests Overruled.—Protests 156382, etc., of J. & H. Rosenberg et al. (New York), and protest 745689 of Jung Joe (Philadelphia). Opinions by Howell, G. A.

Protests unsupported; overruled.

No. 86323.—Drawnwork Articles.—Protests 594486, etc., of Jordan-Marsh Co, (Boston), and protest 689014 of Rahhal Bros. (Pittsburgh). Opinions by Cooper, G. A.

Protests overruled as to drawnwork articles classified under paragraph 349, tariff act of 1909. Frank *v.* United States (5 Ct. Cust. Appls., —; T. D. 34469) followed.

No. 86324.—Coronation Cord.—Protests 717317–45038, etc., of Kunstadter Bros. et al. (Chicago). Opinion by Cooper, G. A.

On the authority of Ulmann *v.* United States (4 Ct. Cust. Appls., 77; T. D. 33363), coronation cord was held properly classified as a cord under paragraph 349, tariff act of 1909.

No. 86325.—Protests Overruled.—Protests 543486, etc., of A. J. Wasson et al. (New York, etc.). Opinion by Cooper, G. A.

Protests unsupported; overruled.

(T. D. 34728.)

Civil service rules regarding removals in the classified service.

[Circular No. 34.]

TREASURY DEPARTMENT, *August 5, 1914.*

To heads of bureaus and chiefs of divisions, Secretary's office, Treasury Department:

Attention is called to the following Executive order containing an amendment to Civil Service Rule XII:

1. Section 6 of the act of August 24, 1912 (37 Stat., 555), provides "That no person in the classified civil service of the United States shall be removed therefrom except for such cause as will promote the efficiency of said service and for reasons given in writing, and the person whose removal is sought shall have notice of the same and of any charges preferred against him, and be furnished with a copy thereof, and also be allowed a reasonable time for personally answering the same in writing; and affidavits in support thereof; but no examination of witnesses nor any trial or hearing shall be required except in the discretion of the officer making the removal; and copies of charges, notice of hearing, answer, reasons for removal, and of the order of removal shall be made a part of the records of the proper department or office, as shall also the reasons for reduction in rank or compensation; and copies of the same shall be furnished to the person affected upon request, and the Civil Service Commission also shall, upon request, be furnished copies of the same: * * *."

2. In making removals or reductions, and in other punishment, like penalties shall be imposed for like offenses, and no discrimination shall be exercised for political or religious reasons.

3. Pending action under section 1 of this rule, or for disciplinary reasons, a person may be suspended for a period not to exceed 90 days, but the reasons for such suspension shall at the time of the suspension be filed in the records of the proper department or office, and copies shall be furnished the commission upon request. The period of suspension may be extended beyond 90 days with the prior consent of the commission.

4. The commission shall have no jurisdiction to review the findings of a removing officer upon the reasons and answer provided for in section 1 of this rule, nor shall the commission have authority to investigate any removal or reduction, unless it is alleged, with offer of proof, that the procedure required by section 1 of this rule has not been followed or that the removal was made for political or religious reasons.

This amendment is recommended by the Civil Service Commission for the following reasons:

The procedure in removals and reductions prescribed by section 2 of the rule as amended February 8, 1912, has been superseded by section 6 of the act of August 24, 1912. It is desirable that this provision of law be incorporated in the rule, and that the statutory provision precede the provisions of the rule resting upon Executive authority. Provisions which do not accord with the statute have been eliminated.

Section 2 supersedes the former section 1, the only material difference being the omission of a statement which appears in the statute, which is now section 1 of the rule as amended.

Section 3, which formerly provided for suspension for a maximum period of 90 days, has been amended to provide for extension of this period with the consent of the commission, authority for suspensions in excess of 90 days being desirable in cases of criminal prosecution or other judicial proceedings, and in some cases for investigation and due deliberation. The provision that the person suspended shall be furnished with a statement of the reasons has been omitted, but the requirement

that the reasons be made a part of the official records is retained, with the further provision that the commission shall be furnished copies of the reasons upon request.

Section 4 remains unchanged, with the single exception that the references to other sections of the rule have been changed to correspond with the amended rule.

WOODROW WILSON.

The WHITE HOUSE, *28 July, 1914.*

Please take due notice of the foregoing and govern yourself accordingly.

BYRON R. NEWTON, *Acting Secretary.*

(T. D. 34729.)

Compensation of customs officers.

Allowance of additional compensation to customs officers while acting as collectors discontinued.—Certain provisions of T. D. 34391 of April 17, 1914, rescinded.

TREASURY DEPARTMENT, *August 19, 1914.*

To collectors and other officers of the customs:

Section 12 of the sundry civil act, approved August 1, 1914, provides that it shall not be lawful hereafter to pay to any person employed in the service of the United States under any general or lump-sum appropriation any sum additional to the regular compensation received for or attached to any employment held prior to an appointment or designation as acting for or instead of an occupant of any other office or employment; that this provision shall not be construed as prohibiting regular and permanent appointments by promotion from lower to higher grades of employment.

Therefore, so much of T. D. 34391, dated April 17, 1914, as permitted payment of additional compensation to a customs officer while acting as collector of customs is hereby rescinded.

(100000.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 34730.)

Drawback on walnuts.

Drawback on cleaned and bleached walnuts produced by Bennett, Day & Co., of New York, N. Y., from imported walnuts.

TREASURY DEPARTMENT, *August 24, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on cleaned and bleached walnuts produced by Bennett, Day & Co., of New York, N. Y., from imported walnuts.

A record shall be kept, which will show, in addition to the usual import data, the lot number and the date of production of each lot of cleaned and bleached walnuts produced for exportation with benefit of drawback, the quantity of imported walnuts used, the quantity of

cleaned and bleached walnuts obtained, and the quantity of waste incurred.

A sworn abstract from such record shall be filed with each drawback entry.

The allowance shall not exceed the net weight of the cleaned and bleached walnuts exported, with an addition to compensate for actual loss incurred, as shown by the sworn abstract from the record prescribed above.

The sworn statement of the producers, dated August 17, 1914, is transmitted herewith for the files of your office.

Respectfully, ANDREW J. PETERS,
(102646.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34731.)

Common carrier.

Discontinuance of the bonded route of the Duluth, Missabe & Northern Railway Co. as a common carrier for the transportation of dutiable merchandise.

TREASURY DEPARTMENT, *August 26, 1914.*

SIR: The department has received your letter of the 12th instant, with which was inclosed a request of the Duluth, Missabe & Northern Railway Co. for the discontinuance of the route covered by the bond of the said company dated August 24, 1908, and approved September 11, 1908, as a common carrier for the transportation of dutiable merchandise.

The discontinuance is authorized hereby, upon the condition that all requirements of the regulations have been complied with on the part of the said company. You should note the fact and date of the discontinuance upon the copy of the bond on file in your office and retain the same without cancellation to meet any liability which may have accrued thereunder.

Respectfully, ANDREW J. PETERS,
(57050.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Duluth, Minn.*

(T. D. 34732.)

String beans in brine.

Appeal directed from decision of the Board of United States General Appraisers of July 24, 1914, Abstract 36166 (T. D. 34668), involving the classification of string beans, shredded, placed in barrels, and salt put over them.

TREASURY DEPARTMENT, *August 27, 1914.*

SIR: I have the honor to acknowledge the receipt of your letter of the 10th instant, relative to the decision of the Board of United

States General Appraisers, dated July 20, 1914, Abstract No. 36166 (T. D. 34668), wherein it was held that certain string beans, shredded, placed in barrels, and salt put over them, which had been assessed with duty as beans prepared or preserved at the rate of 2½ cents per pound under paragraph 251 of the tariff act of 1909, were properly dutiable, as claimed in the protest, at the rate of 40 per cent ad valorem under paragraph 252 of the said act, which paragraph provides that rate of duty upon vegetables, cut, sliced, or otherwise reduced in size, packed in salt.

In view of the importance of the issue, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, ANDREW J. PETERS,
(74432.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 34733.)

Drawback on box straps.

Drawback on embossed steel box straps manufactured by the De Haven Manufacturing Co., of New York, N. Y., from imported hoop steel.

TREASURY DEPARTMENT, *August 28, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on embossed steel box straps manufactured by the De Haven Manufacturing Co., of New York, N. Y., with the use of imported black and galvanized hoop steel.

A record shall be kept, which will show, in addition to the usual import data, the lot number and date of manufacture of each lot of embossed steel box straps manufactured for export with benefit of drawback, the number of bundles of box straps of each size produced, and the net weight of imported hoop steel appearing therein. An abstract from such manufacturing record shall be filed with each drawback entry.

The allowance shall not exceed the quantity of imported hoop steel appearing in the exported embossed box straps, as shown by the abstract from the manufacturing record.

The sworn statement of the manufacturers, dated August 18, 1914, is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(7010.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34734.)

Drawback on flavoring extracts.

T. D. 25095 of March 11, 1904, extended to cover flavoring extracts manufactured by the Davis & Lawrence Co., of New York, N. Y., with the use of domestic tax-paid alcohol.

TREASURY DEPARTMENT, *August 28, 1914.*

SIR: The department's regulations of March 11, 1904 (T. D. 25095), providing for the payment of drawback on flavoring extracts manufactured by the Davis & Lawrence Co., of New York, N. Y., with the use of imported alcohol, are hereby extended to cover flavoring extracts manufactured by the said company with the use of wholly domestic tax-paid alcohol.

The sworn statement of the manufacturers, dated August 6, 1914, is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(40852.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34735.)

Drawback on olives.

Drawback on bottled plain, pitted, and stuffed olives and on olive rings produced by the Falcon Packing Co., of New York, N. Y., from plain, pitted, or stuffed olives imported in bulk.

TREASURY DEPARTMENT, *August 28, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on bottled plain, pitted, and stuffed olives and on olive rings produced by the Falcon Packing Co., of New York, N. Y., from plain, pitted, or stuffed olives imported in bulk.

The allowance shall not exceed the quantity of imported olives appearing in the bottled plain, pitted, and stuffed olives and olive rings exported, as shown by the sworn schedule of the producers, dated August 19, 1914, which is transmitted herewith for filing in your office.

Supplemental schedules covering bottled olives produced by the said company may be filed, and on verification of such schedules drawback on the bottled olives and bottled olive rings covered thereby may be allowed.

Respectfully, ANDREW J. PETERS,
(102618.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34736.)

Drawback on cigarettes.

Drawback on cigarettes manufactured by Starr & Reed, of Philadelphia, Pa., with the use of imported Turkish leaf tobacco.

TREASURY DEPARTMENT, *August 28, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on cigarettes designated as "Egyptian," manufactured by Starr & Reed, of Philadelphia, Pa., with the use of wholly imported Turkish leaf tobacco.

The allowance shall not exceed the quantity of imported Turkish leaf tobacco appearing in the exported cigarettes, as shown by the sworn statement of the manufacturers, dated July 19, 1914, which is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(100327.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Philadelphia, Pa.*

(T. D. 34737.)

Allowance—Decay—Fruit, etc.

T. D. 34241 of March 9, 1914, amended to permit the filing of allowance claims for decay in fruit and other perishable articles within 96 hours after arrival of importing vessel. Examination to determine the amount of decay to be made by weigher or gauger of surveyor's office. T. D. 30023 amended.

TREASURY DEPARTMENT, *August 28, 1914.*

SIR: The department refers to your letter of April 17 last, in relation to the allowance for decay in fruit and other perishable articles under paragraph X of section 3 of the tariff act of October 3, 1913. You recommend that the time within which importers may file written notice claiming such allowance on fruit and other perishable articles be increased to 96 hours, exclusive of Sundays and legal holidays, after the arrival of the importing vessel, as now allowed by T. D. 31699 in the case of lemons, and that the examination to determine the amount of rot should be performed by weighers or gaugers under the surveyor instead of by the appraiser's representative, as required by the existing regulations.

The final paragraph of T. D. 34241 of March 9, 1914, is hereby amended to read as follows:

In order to obtain an allowance under the provisions of paragraph X of section 3 of the existing tariff act on account of shortage or nonimportation, caused by decay, destruction, or injury to fruit and other perishable articles, the importors shall, within 96 hours, exclusive of Sundays and legal holidays, after the arrival of the importing vessel, give notice in writing to the collector of customs of their intention to claim such allowance. The examination to determine the amount of decay or injury to fruit

(T. D. 34734.)

Drawback on flavoring extracts.

T. D. 25095 of March 11, 1904, extended to cover flavoring extracts manufactured by the Davis & Lawrence Co., of New York, N. Y., with the use of domestic tax-paid alcohol.

TREASURY DEPARTMENT, *August 28, 1914.*

SIR: The department's regulations of March 11, 1904 (T. D. 25095), providing for the payment of drawback on flavoring extracts manufactured by the Davis & Lawrence Co., of New York, N. Y., with the use of imported alcohol, are hereby extended to cover flavoring extracts manufactured by the said company with the use of wholly domestic tax-paid alcohol.

The sworn statement of the manufacturers, dated August 6, 1914, is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(40852.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34735.)

Drawback on olives.

Drawback on bottled plain, pitted, and stuffed olives and on olive rings produced by the Falcon Packing Co., of New York, N. Y., from plain, pitted, or stuffed olives imported in bulk.

TREASURY DEPARTMENT, *August 28, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on bottled plain, pitted, and stuffed olives and on olive rings produced by the Falcon Packing Co., of New York, N. Y., from plain, pitted, or stuffed olives imported in bulk.

The allowance shall not exceed the quantity of imported olives appearing in the bottled plain, pitted, and stuffed olives and olive rings exported, as shown by the sworn schedule of the producers, dated August 19, 1914, which is transmitted herewith for filing in your office.

Supplemental schedules covering bottled olives produced by the said company may be filed, and on verification of such schedules drawback on the bottled olives and bottled olive rings covered thereby may be allowed.

Respectfully, ANDREW J. PETERS,
(102618.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34736.)

Drawback on cigarettes.

Drawback on cigarettes manufactured by Starr & Reed, of Philadelphia, Pa., with the use of imported Turkish leaf tobacco.

TREASURY DEPARTMENT, *August 28, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on cigarettes designated as "Egyptian," manufactured by Starr & Reed, of Philadelphia, Pa., with the use of wholly imported Turkish leaf tobacco.

The allowance shall not exceed the quantity of imported Turkish leaf tobacco appearing in the exported cigarettes, as shown by the sworn statement of the manufacturers, dated July 19, 1914, which is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(100327.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Philadelphia, Pa.*

(T. D. 34737.)

Allowance—Decay—Fruit, etc.

T. D. 34241 of March 9, 1914, amended to permit the filing of allowance claims for decay in fruit and other perishable articles within 96 hours after arrival of importing vessel. Examination to determine the amount of decay to be made by weigher or gauger of surveyor's office. T. D. 30023 amended.

TREASURY DEPARTMENT, *August 28, 1914.*

SIR: The department refers to your letter of April 17 last, in relation to the allowance for decay in fruit and other perishable articles under paragraph X of section 3 of the tariff act of October 3, 1913. You recommend that the time within which importers may file written notice claiming such allowance on fruit and other perishable articles be increased to 96 hours, exclusive of Sundays and legal holidays, after the arrival of the importing vessel, as now allowed by T. D. 31699 in the case of lemons, and that the examination to determine the amount of rot should be performed by weighers or gaugers under the surveyor instead of by the appraiser's representative, as required by the existing regulations.

The final paragraph of T. D. 34241 of March 9, 1914, is hereby amended to read as follows:

In order to obtain an allowance under the provisions of paragraph X of section 3 of the existing tariff act on account of shortage or nonimportation, caused by decay, destruction, or injury to fruit and other perishable articles, the importors shall, within 96 hours, exclusive of Sundays and legal holidays, after the arrival of the importing vessel, give notice in writing to the collector of customs of their intention to claim such allowance. The examination to determine the amount of decay or injury to fruit

or other perishable articles shall be performed under the direction of the surveyor, who will detail for this purpose a weigher where the duty or value is based upon weight, or a gauger where the duty or value is based upon gauge. The weigher or gauger, as the case may be, will select the same packages to be examined as the seller exposes as samples for the purpose of sale, and in cases where it is not the practice to expose samples, the weigher or gauger will examine representative packages, consisting of at least 5 per cent of each lot or mark. T. D. 30023 is hereby amended accordingly.

Respectfully, ANDREW J. PETERS,
(68980.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34738.)

Wafers—Biscuits—Cakes.

Appeal directed from decision of the Board of United States General Appraisers of July 3, 1914, G. A. 7584 (T. D. 34627), involving the classification of so-called wafers and biscuits or cakes.

TREASURY DEPARTMENT, *August 28, 1914.*

SIR: I have to acknowledge the receipt of your letter of the 14th instant, inviting attention to the decision of the Board of United States General Appraisers of July 3, 1914, G. A. 7584 (T. D. 34627), involving the classification of so-called biscuits, which were assessed with duty at the rate of 25 per cent ad valorem under paragraph 194 of the present tariff act and were claimed by the importers in their protest to be entitled to admission free of duty under paragraph 417 of the said act.

This decision covers three general classes of merchandise, viz:

1. Wafers, etc., consisting of two pieces of cake between which there is a layer of material which the board held to be confectionery.

2. Biscuits or cakes having upon one surface a coating or icing of the same or similar material used as a filler in the wafers described in class 1.

3. Biscuits or cakes, about 20 per cent of the contents of the packages being of a kind similar to those described in class 2.

The board overruled the protest of the importers as to the merchandise in class 1, but sustained the protest as to the wafers and biscuits covered by classes 2 and 3.

As the issue is an important one, and in accordance with your recommendation, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909, in so far as it relates to the biscuits or cakes referred to in classes 2 and 3.

Respectfully, ANDREW J. PETERS,
(68913.) *Assistant Secretary.*
ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 34739.)

Entry of mail importations.

Formal entry is required for parcel-post and parcel-convention packages and all parcels from countries to which domestic postal conditions apply valued at over $100.

TREASURY DEPARTMENT, *August 29, 1914.*

SIR: The department is in receipt of your letter of the 20th instant, requesting to be advised whether a formal entry will be required to be made of free goods imported by mail where the value exceeds $100.

You invite attention to the fact that mail packages from Cuba handled in your office are destined for various places throughout the United States, and there would be considerable delay in delivering such packages if the addressees are required to make entry at your port or make arrangements for some one to make entry for them.

In reply, I have to state that, in view of the mandatory provisions of paragraph E of section 3 of the act of October 3, 1913, formal customs entry will be required of all parcel-post and parcel-convention packages and of all parcels from countries to which the domestic postal conditions are applied which exceed $100 in value, whether free or dutiable. Where a package destined for a place where a customs officer is located, which, upon a cursory examination at your port, is found to contain articles exceeding $100 in value, the same should be turned over to the postmaster at your port to be forwarded by that officer to the postmaster at the place of delivery, and the customs officer at the latter place should be notified by you of that fact. Formal entry can then be made at the place of delivery.

Respectfully, ANDREW J. PETERS,
(60935.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Jacksonville, Fla.*

(T. D. 34740.)

Marking of Japanese articles.

Articles produced in Japan and marked with the word "Nippon" legally marked under subsection 1 of paragraph F of section 4 of the tariff act of 1913.

TREASURY DEPARTMENT, *August 31, 1914.*

SIR: The department refers to your letter of the 24th ultimo, in relation to an inquiry from a customs broker at your port whether brushes manufactured in Japan and marked with the word "Nippon" would be considered as legally marked under subsection 1 of paragraph F of section 4 of the tariff act of October 3, 1913, which requires all articles of foreign production, capable of being marked, to be

marked in legible English words so as to indicate the country of origin.

The reports received by the department indicate that there is a variance in practice at the several ports in regard to the admission of Japanese articles bearing the word "Nippon." While it appears that the word "Nippon" is the Japanese name for Japan, it is so commonly employed in this country to designate Japan that it may now be considered as incorporated in our language with a well-established meaning.

The department is therefore of the opinion that articles produced in Japan and marked with the word "Nippon" are legally marked under subsection 1 of paragraph F. The inquiry of the broker should therefore be answered in the affirmative.

Respectfully, ANDREW J. PETERS,
(68174–11.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *San Francisco, Cal.*

(T. D. 34741.)

Measurement of foreign vessels.

Customs officers informed of the regulations of the Secretary of Commerce concerning the measurement of foreign vessels.

TREASURY DEPARTMENT, *September 1, 1914.*

To collectors of customs:

At the request of the Secretary of Commerce, the appended copy of the regulations of his department concerning the measurement of foreign vessels is published for your information.

(92916.) ANDREW J. PETERS, *Assistant Secretary.*

DEPARTMENT OF COMMERCE,
BUREAU OF NAVIGATION,
Washington, August 25, 1914.

[General letter No. 77.]

To collectors of customs:

Merchant vessels of Great Britain, Belgium, Denmark, Austria-Hungary, the German Empire, Italy, Sweden, Norway, Spain, the Netherlands, Russia, Finland, Portugal, Japan, and France will be deemed to be of the tonnage denoted in their certificates of register or other national papers, and it shall not be necessary for such vessels to be remeasured at any port of the United States, the measurement laws of those countries being substantially similar to the laws of the United States. (Act of August 5, 1882.)

This regulation supersedes the department's regulations included in article 85, Customs Regulations, 1908, and so much of article 87 as may conflict with this order.

E. T. CHAMBERLAIN, *Commissioner.*

Approved:

E. F. SWEET, *Acting Secretary.*

(T. D. 34742.)

Abstracts of decisions of the Board of General Appraisers.

Board 1.—McClelland, Sullivan, and Brown. *Board 2.*—Fischer, Howell, and Cooper. *Board 3.*—Waite, Somerville, and Hay.

BEFORE BOARD 1, AUGUST 21, 1914.

No. 36326.—LEAF TOBACCO.—Protest 746832 of F. Lozano Son & Co. (Jacksonville). Opinion by Sullivan, G. A.

Protest overruled as to tobacco classified as containing more than 15 per cent of wrapper under the provisions of paragraph 181, tariff act of 1913.

No. 36327.—JEWELRY.—Protest 733420 of Borrelli & Vitelli (New York). Opinion by Sullivan, G. A.

Cohn *v.* United States (4 Ct. Cust. Appls., 378; T. D. 33536) followed as to jewelry. Protest sustained in part.

No. 36328.—PROTESTS OVERRULED.—Protests 427285, etc., of Githens, Rexsamer & Co. et al. (Philadelphia). Opinion by Sullivan, G. A.

Protests unsupported; overruled.

No. 36329.—INDIGO PASTE.—Protests 606040, etc., of H. A. Metz & Co. et al. (New York). Opinion by Brown, G. A.

On the authority of Klipstein *v.* United States (4 Ct. Cust. Appls., 510; T. D. 33936) indigo paste was held dutiable under paragraph 25, tariff act of 1909, as claimed.

No. 36330.—FISH IN TINS.—Protests 470865, etc., of Meyer & Lange, and protests 402058, etc., of Strohmeyer & Arpe Co. (New York), protests 463836, etc., of I. Groes et al., and protests 708930, etc., of Monti & Palombi et al. (New York, etc.). Opinions by Brown, G. A.

United States *v.* Miller (5 Ct. Cust. Appls., —; T. D. 34443) followed as to fish in tins. Protests sustained in part.

BEFORE BOARD 2, AUGUST 21, 1914.

No. 36331.—PROTEST FEE.—Protests 734526, etc., of United Drug Co. (Boston). Opinion by Fischer, G. A.

Protests sustained on the authority of United States *v.* McCoy (5 Ct. Cust. Appls., —; T. D. 34445) relating to protest fee.

No. 36332.—SPROCKET CHAINS.—Protests 733432, etc., of H. F. L. Funke Co. (New York). Opinion by Fischer, G. A.

Sprocket chains classified as parts of automobiles under paragraph 119, tariff act of 1913, were held dutiable under the specific provision therefor in paragraph 126.

No. 36333.—PROTESTS OVERRULED.—Protests 730780–45502, etc., of G. W. Sheldon & Co. et al. (Chicago), protest 733355 of Belknap Hardware & Manufacturing Co. (Louisiville), protests 527378, etc., of I. Maddaus et al. (New York), and protests 723570, etc., of Mill & Mine Supply Co. et al. (Seattle). Opinions by Fischer, G. A.

Protests unsupported; overruled.

No. 86334.—MALINES NETS.—Protest 560024 of S. Hollander (New York). Opinion by Howell, G. A.

Protest sustained on the authority of Abstract 24701 (T. D. 31255), relating to Malines nets.

No. 86335.—PROTESTS OVERRULED.—Protests 161388, etc., of Samuel Schiff & Co. et al. (New York). Opinion by Howell, G. A.

Protests unsupported; overruled.

BEFORE BOARD 3, AUGUST 21, 1914.

No. 86336.—WEIGHT OF CHEESE.—Protests 707184, etc., of American Express Co. et al. (New York). Opinion by Waite, G. A.

Protests overruled as to weight of cheese.

No. 86337.—SMOKERS' ARTICLES.—CLAY PIPE BOWLS.—Protest 733080 of Kaufmann Bros. & Bondy (New York). Opinion by Hay, G. A.

Clay pipe bowls with metal ferrules were held properly classified at 50 per cent ad valorem under paragraph 381, tariff act of 1913.

No. 86338.—WHETSTONES.—Protest 732987 of C. A. Johnson & Co. (New York). Opinion by Hay, G. A.

English blue whetstones and Water of Ayr whetstones were held properly classified as articles composed of earthy or mineral substances under paragraph 81, tariff act of 1913. United States *v.* Johnson (4 Ct. Cust. Appls., 104; T. D. 33375) followed.

No. 86339.—SAWED TALC.—Protest 727163 of L. Blanc Walther (New York). Opinion by Hay, G. A.

Sawed talc classified under paragraph 13, tariff act of 1909, was held dutiable as a nonenumerated manufactured article (par. 480). American Lava Co. *v.* United States (3 Ct. Cust. Appls., 522; T. D. 33169) followed.

No. 86340.—RELIQUIDATION—FRAUD.—Protest 661651 of F. Vitelli & Son (New York). Opinion by Hay, G. A.

On the authority of United States *v.* Vitelli (5 Ct. Cust. Appls., —; T. D. 34194) protest overruled relating to a reliquidation made more than a year after entry.

No. 86341.—SPOOLS CONTAINING SILK YARN.—Protests 497045, etc., of F. B. Vandegrift & Co. (New York). Opinion by Hay, G. A.

United States *v.* Vandegrift (4 Ct. Cust. Appls., 355; T. D. 33531) followed as to spools containing silk yarn, held dutiable as a part of the merchandise imported thereon. Protests sustained. G. A. 7589 (T. D. 34666) cited.

BEFORE BOARD 1, AUGUST 25, 1914.

No. 86342.—UMBRELLA STICKS.—Protests 722812, etc., of Edw. Benneche & Bro. (New York). Opinion by McClelland, G. A.

MCCLELLAND, *General Appraiser:* The merchandise which is the subject of these protests was assessed for duty as wood unmanufactured at the rate of 20 per cent ad valorem under paragraph 203 of the tariff act of 1909, and are claimed to be free as sticks for umbrellas in the rough and not further advanced than cut into lengths under paragraph 713 of said act.

It is evident that duty was assessed upon the theory that these sticks are umbrella handles and not umbrella sticks. They run approximately 14 inches in length and each is apparently cut from the root end of a boxwood stem and are in the rough, natural state. From the testimony it appears that for a long period of years it has always been passed free of duty. While it is true that some of them before being used are bent, nevertheless many of them are used in the natural form with a steel rod inserted. They are more than umbrella handles and it is a matter of common knowledge that full length umbrella sticks are no longer used. This fact, together with a long-continued practice of classifying them free of duty, warrants a reversal of the collector's action, and the protests are therefore sustained.

No. 36343.—Embroidered Leather Gloves.—Protest 717192 of Jordan-Marsh Co. (Boston). Opinion by McClelland, G. A.

Protest sustained on the authority of United States *v.* Wertheimer (4 Ct. Cust. Appls., 338; T. D. 33528) as to embroidered leather gloves.

No. 36344.—Protests Overruled.—Protests 691665, etc., of M. Rice & Co. et al. (Philadelphia). Opinion by McClelland, G. A.

Protests unsupported; overruled.

No. 36345.—Lace Pins.—Protests 484197, etc., of Pratt & Farmer Co. et al. (New York). Opinion by Sullivan, G. A.

Altman *v.* United States (5 Ct. Cust. Appls., —; T. D. 34475) followed as to lace pins held dutiable under paragraph 109 or 199, tariff act of 1909, as claimed.

No. 36346.—Imitation Pearl Beads.—Protest 481532 of Wm. E. Flory & Co. (New York). Opinion by Sullivan, G. A.

Imitation pearl beads not threaded or strung, classified as beaded articles, were held dutiable as beads under paragraph 421, tariff act of 1909, as claimed.

No. 36347.—Strung Beads—Imitation Precious Stones.—Protests 574081–40458, etc., of Marshall Field & Co. (Chicago). Opinion by Sullivan, G. A.

Imitation pearl beads temporarily strung, classified under paragraph 421, tariff act of 1909, were claimed dutiable as imitation precious stones (par. 449). Protests overruled on the authority of Lorsch *v.* United States (5 Ct. Cust. Appls., —; T. D. 34132).

No. 36348.—Imitation Precious Stones.—Protests 679884, etc., of F. W. Gertzen & Co., protests 667792, etc., of G. Hirsch's Sons, and protests 675247, etc., of A. Lorsch & Co. (New York). Opinions by Sullivan, G. A.

Imitation precious stones on wire, classified as manufactures of metal and paste under paragraph 199 or 109, tariff act of 1909, were held dutiable under paragraph 449, as claimed. G. A. 7267 (T. D. 31844) followed.

No. 36349.—Silver Mesh.—Protests 638442, etc., of E. A. Bliss & Co. (New Haven). Opinion by Sullivan, G. A.

Protests sustained claiming silver mesh dutiable under paragraph 199, tariff act of 1909. G. A. 7426 (T. D. 33144) followed.

No. 36350.—Sapphire Blanks.—Protest 572887 of Dingelstedt & Co., and protests 591421, etc., of Wells, Fargo & Co. (New York). Opinions by Sullivan, G. A.

On the authority of United States *v.* General Electric Co. (4 Ct. Cust. Appls., 287; T. D. 33494) sapphire blanks were held dutiable as articles of earthy or mineral substances under paragraph 95, tariff act of 1909. Protests sustained.

No. 36351.—JEWELRY.—Protests 395607-30617, etc., of Geo. J. Beierle & Co., and protests 408484-31691, etc., of Marshall Field & Co. (Chicago), protests 442151, etc., of Abraham & Straus et al., protests 478583, etc., of M. J. Corbett & Co. et al., protests 497240, etc., of R. F. Lang et al., protests 564544, etc., of A. Lorsch & Co. et al., protests 444328, etc., of Royal Metal Manufacturing Co. et al., and protests 406748, etc., of Wiener Bros. et al. (New York), and protests 324539, etc., of American Express Co. et al. (St. Louis). Opinions by Sullivan, G. A.

The merchandise here in question was held dutiable as follows: (1) Articles commonly and commercially known as jewelry, under paragraph 448, tariff act of 1909, on the authority of Cohn *v.* United States (4 Ct. Cust. Appls., 378; T. D. 33536); (2) imitation jet articles, under paragraph 109, on the authority of United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506); (3) beaded bags, under paragraph 421; and gun-metal mesh bags, under paragraph 199, on the authority of G. A. 7129 (T. D. 31089). Protests sustained in part.

No. 36352.—PROTESTS OVERRULED.—Protest 664185 of Max Wocher & Sons Co. (Cincinnati), protests 717016, etc., of M. L. Eckstein & Co., protests 676730, etc., of Albert Lorsch & Co., and protests 732021, etc., of Marks & Meyer Importing Co. et al. (New York), protests 670722, etc., of John M. Maris & Co. (Philadelphia), and protests 497515, etc., of Bausch & Lomb Optical Co. (Rochester). Opinions by Sullivan, G. A.

Protests unsupported; overruled.

No. 36353.—FISH IN TINS.—Protests 408465-31230, etc., of P. V. Bright Brokerage Co. et al. (Chicago and Minneapolis). Opinion by Brown, G. A.

United States *v.* Miller (5 Ct. Cust. Appls., —; T. D. 34443), United States *v.* Smith (4 Ct. Cust. Appls., 70; T. D. 33312), Ahlbrecht *v.* United States (2 Ct. Cust. Appls., 471; T. D. 32226), United States *v.* Rosenstein (1 Ct Cust. Appls., 304; T. D. 31357), and Smith *v.* United States (5 Ct. Cust. Appls., —; T. D. 34008) followed as to fish in tins.

BEFORE BOARD 2, AUGUST 25, 1914.

No. 36354.—SHOWCARDS.—Protests 720726, etc., of Kaufmann & Strauss Co. (New York). Opinion by Fischer, G. A.

Showcards classified as in chief value of metal under paragraph 199, tariff act of 1909, found to be composed chiefly of cardboard and surface-coated paper, were held dutiable under paragraph 420, as claimed. Abstract 33192 (T. D. 33668) followed. Protests sustained in part.

No. 36355.—PROTESTS OVERRULED.—Protest 732968 of Oelrichs & Co. (New York). Opinion by Fischer, G. A.

Protest unsupported; overruled.

No. 36356.—UNTRIMMED HATS.—Protest 243724 of R. L. Cochran Co., protest 213885 of Hunken, Neale & Forbes, and protests 270026, etc., of C. Joseph (New York). Opinions by Howell, G. A.

Untrimmed hats classified as fiber wearing apparel and silk wearing apparel under paragraphs 314 and 390, respectively, tariff act of 1897, were held dutiable according to the component material of chief value under paragraphs 409 and 314. Thomass *v.* United States (1 Ct. Cust. Appls., 86; T. D. 31107), United States *v.* Cochran (3 Ct. Cust. Appls., 57; T. D. 32349), and Zimmermann *v.* United States (5 Ct. Cust. Appls., —; T. D. 34137) cited.

No. 86357.—EDGINGS AND INSERTINGS—BRAIDS.—Protests 661433, etc., of Bernhard Ulmann & Co. (New York). Opinion by Howell, G. A.

Cotton laces and insertings classified as made on the Lever or Gothrough machine under paragraph 350, tariff act of 1909, were claimed dutiable as braids (par. 349). Protests overruled on the authority of G. A. 7339 (T. D. 32330).

No. 86358.—SILK TRIMMINGS—CRAPE.—Protests 701058, etc., of Heyliger & Raubitschek (New York). Opinion by Howell, G. A.

Silk crape and silk veilings classified as trimmings under paragraph 402, tariff act of 1909, were claimed dutiable as woven silk fabrics in the piece (par. 399). Protests overruled. Robinson *v.* United States (122 Fed., 970) and G. A. 4698 (T. D. 22160) followed.

No. 86359.—LEVER-LACE TRIMMED UNDERWEAR, EMBROIDERED.—Protest 680974 of Geo. W. Sheldon & Co. (New York). Opinion by Howell, G. A.

Ladies' cotton underwear, embroidered, made in part of Lever lace, classified under paragraph 350, tariff act of 1909, was claimed dutiable under paragraph 349 or 402. Protest overruled. Altman *v.* United States (5 Ct. Cust. Appls., —; T. D. 34251) followed.

No. 86360.—EMBROIDERED WEARING APPAREL.—Protest 727322 of American Express Co. (Boston). Opinion by Cooper, G. A.

Men's shirts embroidered with initials, evidently intended for the identification of the garments, classified under paragraph 358, tariff act of 1913, were claimed dutiable as linen wearing apparel (par. 278), the contention being that the initials were put on for the purpose of utility and not for ornamentation, and therefore do not constitute embroidery. Protest overruled on the authority of Woodruff *v.* United States (2 Ct. Cust. Appls., 186; T. D. 31942).

No. 86361.—PROTESTS OVERRULED.—Protests 653716, etc., of Henry Glass & Co. et al. (New York). Opinion by Cooper, G. A.

Protests unsupported; overruled.

BEFORE BOARD 3, AUGUST 25, 1914.

No. 86362.—BUTTONS.—Protests 695512, etc., of A. Steinhardt & Bro. (New York). Opinion by Somerville, G. A.

Protests overruled as to buttons classified under paragraph 427, tariff act of 1909.

No. 86363.—WEIGHT OF WOOL—TARE.—Protests 724506, etc., of Tattersfield Co. (Philadelphia). Opinion by Somerville, G. A.

American Sugar Refining Co. *v.* United States (3 Ct. Cust. Appls., 69; T. D. 32352) and United States *v.* Bush (5 Ct. Cust. Appls., —; T. D. 34187) followed as to weight of wool. Protests sustained in part.

No. 86364.—BREAKAGE—CORDIALS IN BOTTLES.—Protest 730075 of Burhenne & Dorn (New York). Opinion by Somerville, G. A.

Protest overruled as to bottles alleged to have been broken in an importation of cordial.

No. 36365.—SALT BRINE—MINERAL WATER.—Protest 740132 of North American Mercantile Co. (San Francisco). Opinion by Somerville, G. A.

So-called "salt brine" classified as mineral water under paragraph 312, tariff act of 1909, was claimed dutiable as a nonenumerated article (par. 480). Protest, which was submitted upon a citation or reference to a former decision, overruled. United States *v.* Lun Chong (3 Ct. Cust. Appls., 468; T. D. 33041) cited.

No. 36366.—WINE IN EXCESS.—Protest 729093 of Snow's United States Sample Express Co. (New York). Opinion by Somerville, G. A.

On the authority of G. A. 5518 (T. D. 24858) and De Fremery *v.* United States (171 Fed., 677; T. D. 29729) protest overruled, claiming that additional duty should not have been assessed on an excess of wine.

No. 36367.—PROTEST OVERRULED.—Protest 726339 of S. S. Pierce Co. (Boston). Opinion by Somerville, G. A.

Protest unsupported; overruled.

No. 36368.—EARTHENWARE TEAPOTS.—Protest 733532 of J. T. Steeb & Co. (Seattle). Opinion by Hay, G. A.

Earthenware teapots classified under paragraph 80, tariff act of 1913, were held dutiable under paragraph 79, as claimed.

No. 36369.—PERFUMERY BOXES—UNUSUAL COVERINGS.—Protest 733003 of United Drug Co. (Boston). Opinion by Hay, G. A.

Lithographed boxes containing bottles of perfumery, classified as usual coverings at the same rate of duty as their contents, under paragraph 48, tariff act of 1913, were claimed dutiable as lithographed tins (par. 324 or 360). Protest overruled.

No. 36370.—SHORTAGE OF LACE.—Protest 731654 of M. J. Corbett & Co. (New York). Opinion by Hay, G. A.

Protest overruled claiming shortage of lace.

No. 36371.—GROUND GEYSERITE—SAND.—Protests 726461, etc., of Massce & Co. et al. (New York). Opinion by Hay, G. A.

Ground geyserite classified as a nonenumerated article under paragraph 480, tariff act of 1909, or as an earthy or mineral substance wholly or partly manufactured, under paragraph 81, tariff act of 1913, was held entitled to free entry as sand, crude or manufactured (par. 683, tariff act of 1909, and par. 614, tariff act of 1913). Abstract 29546 (T. D. 32767) cited.

No. 36372.—CLERICAL ERROR.—Protest 726041 of A. H. Leavitt (Portland, Me.). Opinion by Hay, G. A.

It is here claimed that a consignment of fish intended to be entered in bond was entered for consumption through clerical error, the purpose of the ultimate consignees being to let the consignment remain in bond until the tariff act of 1913 should go into force, when the fish in question would be entitled to free entry. This was held not to be a clerical error, on the authority of United States *v.* Wyman (4 Ct. Cust. Appls., 264; T. D. 33485).

No. 36373.—RELIQUIDATION—CARMELITE WARE.—Protests 533578, etc., of Bawo & Dotter et al. (New York). Opinion by Hay, G. A.

United States *v.* Straus (5 Ct. Cust. Appls., —; T. D. 34193) followed as to the validity of reliquidation of certain entries of carmelite ware. Protests sustained.

BEFORE BOARD 1, AUGUST 26, 1914.

No. 86374.—PROTEST DISMISSED.—Protest 747425 of A. Herskovitz & Son (New York). Opinion by McClelland, G. A.

Protest dismissed upon stipulation of counsel.

No. 86375.—PLATINUM WIRE—CHAIN LINKS.—Protests 713043, etc., of American Express Co. (New York). Opinion by Sullivan, G. A.

Platinum wire in the form of coils was held entitled to free entry as platinum unmanufactured, under paragraph 653, tariff act of 1909. Protest overruled as to platinum wire in link form used for jewelry purposes in the manufacture of chains, classified under the latter part of paragraph 448.

No. 86376.—IMITATION PRECIOUS STONES.—Protest 556493 of A. Lorsch & Co. (New York). Opinion by Sullivan, G. A.

Imitation pearls attached to wires, classified as parts of jewelry under paragraph 448, tariff act of 1909, were held dutiable as imitation precious stones (par. 449). G. A. 7155 (T. D. 31234) followed.

No. 86377.—IMITATION PEARL BEADS.—Protests 592227–40971, etc., of G. W. Sheldon & Co. et al. (Chicago), and protests 691635, etc., of Gimbel Bros. et al. (Philadelphia). Opinions by Sullivan, G. A.

Lorsch *v.* United States (5 Ct. Cust. Appls., —; T. D. 34132) followed as to imitation pearl beads held dutiable under paragraph 421, tariff act of 1909.

No. 86378.—JEWELRY—MESH BAGS.—Protests 497537, etc., of Jordan-Marsh Co. et al. (Boston), protests 567789, etc., of A. C. Bosselman & Co., and protests 412054, etc., of H. Wolff & Co., et al. (New York). Opinions by Sullivan, G. A.

Cohn *v.* United States (4 Ct. Cust. Appls., 378; T. D. 33536) followed as to merchandise commonly known as jewelry. Metal coin cases and mesh bags were held dutiable as manufactures of metal (par. 199). G. A. 7129 (T. D. 31089) followed.

No. 86379.—PROTESTS OVERRULED.—Protests 622079, etc., of American Express Co. (New York), and protests 693269, etc., of Butler Bros. et al. (St. Louis). Opinions by Sullivan, G. A.

Protests unsupported; overruled.

No. 86380.—FISH IN TINS.—Protests 466456, etc., of Emerson & Hall et al. (Minneapolis, etc.), and protests 538110, etc., of F. Montagnino et al. (New York). Opinions by Brown, G. A.

United States *v.* Smith (4 Ct. Cust. Appls., 70; T. D. 33312), United States *v.* Miller (5 Ct. Cust. Appls., —; T. D. 34443), and Smith *v.* United States (5 Ct. Cust. Appls., —; T. D. 34008) followed as to fish in tins.

No. 86381.—PROTESTS OVERRULED.—Protests 702191, etc., of R. F. Lang et al. (New York). Opinion by Brown, G. A.

Protests unsupported; overruled.

No. 86382.—PROTESTS ABANDONED.—Protests 28560, etc., of Bloomingdale Bros. et al. (New York).

Protests abandoned.

BEFORE BOARD 2, AUGUST 26, 1914.

No. 36383.—ELECTROLIERS—INCANDESCENT ELECTRIC-LIGHT BULBS.—Protest 736737 of L. D. Bloch & Co. (New York).

HOWELL, *General appraiser:* The merchandise in question is described in the invoice as "electroliers." It was assessed for duty at the rate of 30 per cent ad valorem under the provision for "incandescent electric-light bulbs and lamps, with or without filaments," in paragraph 95, tariff act of 1913.

On the trial the importers introduced in evidence a sample of the merchandise, which was subsequently allowed to be withdrawn and a description of the article agreed to between the Assistant Attorney General and counsel for the importer was read into the record as follows:

It is agreed between counsel for the importers and counsel for the Government that the sample, marked Exhibit 1, protest 736737, consists of a metal figure of a woman, on a metal base, having at the bottom a metal plate with the name La Brise thereon, the whole being about 18 inches in height; the right hand of the figure contains a torch in which is placed a socket for an electric light. Near the bottom of the figure there is a green insulated cord for transmission of the electric light.

It appears from the testimony that the socket for holding the electric-light bulb and the green insulated cord for transmission of the current were not imported with the metal figure, but were attached to it after its importation. In its imported condition the figure is not an incandescent electric-light bulb or lamp. It may, and doubtless will, be made into an electric-light lamp, but it requires the addition of at least two substantial parts before it will be a completed lamp. In order to make the imported article into an electric-light lamp there must be added thereto a metal socket, into which must be inserted a glass bulb with filaments. As the article in the condition imported lacks these essential parts to make it a completed lamp, we think it is excluded from paragraph 95. Lang *v.* United States (5 Ct. Cust. Appls., —; T. D. 34552).

The claim in the protest that the article is properly dutiable as a manufacture of metal at the rate of 20 per cent ad valorem under paragraph 167 of said act is sustained and the entry will be reliquidated accordingly. * * *

No. 36384.—SILK TRIMMINGS—SILK RIBBONS.—Protest 736006 of Ernest L. Rhodes Co. (Atlanta). Opinion by Howell, G. A.

Protest overruled as to merchandise classified as silk trimmings under paragraph 358, tariff act of 1913, and silk velvet ribbons under paragraph 314, claimed to be composed in chief value of cotton, dutiable under paragraph 257.

No. 36385.—COTTON WEARING APPAREL IN PART OF LEVER LACE.—Protest 732415 of R. H. Macy & Co. (New York), and protest 729567 of J. L. Vandiver (Philadelphia). Opinions by Howell, G. A.

Cotton wearing apparel composed in part of Lever lace but not in chief value thereof, classified under paragraph 350, tariff act of 1909, was held dutiable as cotton wearing apparel in part of lace (par. 349). Altman *v.* United States (5 Ct. Cust. Appls., —; T. D. 34251) followed.

No. 36386.—BRIDAL VEILS IN PART OF LEVER LACE.—Protests 687147, etc., of E. & Z. Van Raalte (New York). Opinion by Howell, G. A.

Protests overruled as to cotton bridal veils classified as made in part of Lever lace under paragraph 350, tariff act of 1909, and claimed dutiable under paragraph 349.

No. 86387.—Laces in Part of Lever Material.—Protests 714939, etc., of Case & Co. (New York). Opinion by Howell, G. A.

Laces composed in chief value or in part of lace made on the Lever or Gothrough machine were held properly classified under paragraph 350, tariff act of 1909. Stein *v.* United States (2 Ct. Cust. Appls., 519; T. D. 32250) and Stiner *v.* United States (5 Ct. Cust. Appls., —; T. D. 34428) followed.

No. 86388.—Cotton Wearing Apparel, Embroidered.—Protest 703563 of Wm. Filene's Sons Co. (Boston). Opinion by Howell, G. A.

Embroidered cotton wearing apparel not made in part of Lever lace was held dutiable under paragraph 349, tariff act of 1909, as claimed.

No. 86389.—Silk Velvets.—Protest 726551 of John S. Elliott (Seattle). Opinion by Howell, G. A.

Protest overruled as to silk velvets classified under paragraph 399, tariff act of 1909.

No. 86390.—Protests Overruled.—Protest 711830 of Wm. Filene's Sons Co. (Boston), protests 740468, etc., of A. B. Fiedler & Sons et al., and protest 698371–44453 of O. B. Tennis (Chicago), and protest 745687 of W. H. Horstmann Co. (Philadelphia). Opinions by Howell, G. A.

Protests unsupported; overruled.

No. 86391.—Protests Overruled.—Protests 628187, etc., of F. Ludewig & Co. et al. (New York). Opinion by Cooper, G. A.

Protests unsupported; overruled.

Before Board 3, August 26, 1914.

No. 86392.—Duress.—Protests 705693–44392, etc., of Burley & Tyrrell Co. (Chicago). Opinion by Waite, G. A.

Protests overruled claiming duress. Abstract 36273 (T. D. 34704) followed.

No. 86393.—Wood Pulp—Favored Nations.—Protests 691720, etc., of Wm. A. Foster & Co. et al. (New York, etc.). Opinion by Somerville, G. A.

American Express Co. *v.* United States (4 Ct. Cust. Appls., 146; T. D. 33434) followed as to wood pulp the product of Sweden.

No. 86394.—Gauge of Whisky.—Protest 723591 of A. W. Fenton, jr. (Cleveland). Opinion by Somerville, G. A.

Protest overruled as to gauge of whisky.

No. 86395.—Shortage.—Protest 726634 of Wm. Larzelere & Co. (Philadelphia). Opinion by Somerville, G. A.

Protest sustained claiming shortage of terneplates.

Decisions on Applications for Rehearings.

No. 86396.—Rehearing Denied.—Application by the protestants for rehearing in protests 670590–43166, etc., of Sears, Roebuck & Co. (Chicago), G. A. 7579 (T. D. 34601). No. 782. Before Board 1, August 11, 1914.

No. 86397.—Rehearing Denied.—Application by the protestants for rehearing in protests 726263, etc., of Joel-Baily-Davis Co. (Philadelphia), Abstract 35645 (T. D. 34468). No. 770. Before Board 2, August 27, 1914.

No. 36398.—REHEARING DENIED.—Application by the protestants for rehearing in protests 722901, etc., of M. Mishel & Co. (Boston), Abstract 35820 (T. D. 34548). No. 775. Before Board 2, August 27, 1914.

No. 36399.—REHEARING GRANTED—DRAWNWORK HANDKERCHIEFS.—Application by the Government for rehearing in protest 500446 of F. M. Jabara & Bro. (New York), Abstract 35849 (T. D. 34548). No. 779. Before Board 2, August 27, 1914.

No. 36400.—REHEARING GRANTED—COTTON CLOTH.—Application by the protestants for rehearing in protests 706673, etc., of J. Sachs & Co. (New York), Abstract 35823 (T. D. 34548). No. 781. Before Board 2, August 27, 1914.

No. 36401.—REHEARING DENIED.—Application by the protestants for rehearing in protest 725385–4538 of Continental Commission Co. (New Orleans), Abstract 35998 (T. D. 34604). No. 784. Before Board 2, August 27, 1914.

No. 36402.—REHEARING DENIED.—Application by the protestants for rehearing in protest 360075 of American Bead Co. (New York), Abstract 36105 (T. D. 34652). No. 788. Before Board 1, August 27, 1914.

(T. D. 34743.)

Silk hair nets.

Appeal directed from decision of the Board of United States General Appraisers of July 3, 1914, Abstract 36066 (T. D. 34629), wherein it was held that certain silk hair nets which had been assessed with duty at the rate of 70 per cent ad valorem under paragraph 350, tariff act of 1909, as articles made on the Lever or Gothrough machine, were properly dutiable at the rate of 60 per cent ad valorem under paragraph 402 of the said act.

TREASURY DEPARTMENT, *August 29, 1914.*

SIR: The department duly received your letter of the 25th ultimo, inviting attention to the decision of the Board of United States General Appraisers of July 3, 1914, Abstract 36066 (T. D. 34629), involving the classification of silk hair nets, which were assessed with duty at the rate of 70 per cent ad valorem under paragraph 350 of the tariff act of 1909 as articles made on the Lever or Gothrough machine, and which were held by the board to be properly dutiable at the rate of 60 per cent ad valorem under paragraph 402 of the said act, the board's decision being based upon its finding of fact that the silk hair nets were not produced on the Lever or Gothrough machine.

In accordance with your recommendation, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the board's decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of 1909.

Respectfully, ANDREW J. PETERS,
(68860.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 34744.)

Examination of merchandise prior to entry.

TREASURY DEPARTMENT, *August 31, 1914.*

To collectors and other officers of the customs:

It has come to the attention of the department that, owing to disturbed conditions by reason of the war in Europe, merchandise sometimes arrives prior to receipt of the consular invoices or other papers on which entry can be made.

In view of these conditions, collectors of customs are hereby authorized, until further instructed, to permit a consignee or owner to open the cases and inspect the goods under customs supervision for the purpose of preparing a pro forma invoice, when it shall satisfactorily appear that, owing to the war conditions in Europe, the importer has been unable to obtain the necessary papers on which to make entry, and that he can not otherwise obtain such information.

A bond for the production of a certified invoice will be required in all cases where the value of the merchandise is more than $100.

(102801.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 34745.)

Samples of food and drug products.

Samples of food and drug products should be sent to food and drug laboratories by parcel post instead of by express.

TREASURY DEPARTMENT, *August 31, 1914.*

To collectors and other officers of the customs:

The Secretary of Agriculture has stated that a considerable saving would result to his department if samples of food and drug products were forwarded to the food and drug laboratories by parcel post instead of by express.

Hereafter, when consistent with the Postal Regulations, packages containing such samples should be forwarded by means of the parcel post.

Charges, as heretofore, shall be assessed against the importers or the Department of Agriculture, depending upon whether the merchandise is rejected or admitted.

(95500.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 34746.)

Crushed stone.

Crushed stone dutiable at the rate of 20 per cent ad valorem under paragraph 81, tariff act of 1913.

TREASURY DEPARTMENT, *September 1, 1914.*

SIR: I have to acknowledge the receipt of your letter of the 17th ultimo, inviting attention to the decision of the Board of United

States General Appraisers of August 14, Abstract 36304 (T. D. 34727), overruling the protest of the importers that certain crushed stone imported through your port, which had been assessed with duty under paragraph 385 of the tariff act, was entitled to admission free of duty as crude minerals under paragraph 549 of the said act.

In view of the department's ruling in T. D. 34028 that crushed stone is dutiable at the rate of 20 per cent ad valorem under paragraph 81 of the tariff act, you request to be advised whether crushed stone should be classified as a nonenumerated manufactured article at the rate of 15 per cent ad valorem under paragraph 385 or at the rate of 20 per cent ad valorem as an earthy or mineral substance wholly or partly manufactured under paragraph 81.

In reply, I have to advise you that by reference to the full text of the unpublished decision reported as Abstract 36304, it would appear that the board's decision is addressed rather to the question whether the merchandise was free of duty than to the proper rate of duty thereon, and to the end that the question whether crushed stone is properly dutiable under paragraph 81 may be the subject of judicial determination, you are hereby directed to assess duty thereon at the rate of 20 per cent ad valorem under paragraph 81, leaving to the importers, if dissatisfied, their remedy by protest.

Respectfully, ANDREW J. PETERS,
(23500.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Detroit, Mich.*

(T. D. 34747.)

An act to amend section 195, act of March 3, 1911, relating to the judiciary.

Appeals to United States Supreme Court from decisions of the Court of Customs Appeals.

TREASURY DEPARTMENT, *September 2, 1914.*

To collectors of customs and others concerned:

The appended act of Congress, approved August 22, 1914, amending section 195 of the act entitled "An act to codify, revise, and amend the laws relating to the judiciary," approved March 3, 1911, is published for the information of all concerned.

(92655–29.) ANDREW J. PETERS, *Assistant Secretary.*

[Public No. 180, 63d Congress—S. 6116.]

AN ACT To amend section one hundred and ninety-five of the Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section one hundred and ninety-five of an Act entitled

"An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven, be, and hereby is, amended so as to read as follows:

"SEC. 195. That the Court of Customs Appeals established by this chapter shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided, final decisions by a board of general appraisers in all cases as to the construction of the law and the facts respecting the classification of merchandise and the rate of duty imposed thereon under such classifications, and the fees and charges connected therewith, and all appealable questions as to the jurisdiction of said board, and all appealable questions as to the laws and regulations governing the collection of the customs revenues; and the judgments and decrees of said Court of Customs Appeals shall be final in all such cases: *Provided, however*, That in any case in which the judgment or decree of the Court of Customs Appeals is made final by the provisions of this title, it shall be competent for the Supreme Court, upon the petition of either party, filed within sixty days next after the issue by the Court of Customs Appeals of its mandate upon decision, in any case in which there is drawn in question the construction of the Constitution of the United States, or any part thereof, or of any treaty made pursuant thereto, or in any other case when the Attorney General of the United States shall, before the decision of the Court of Customs Appeals is rendered, file with the court a certificate to the effect that the case is of such importance as to render expedient its review by the Supreme Court, to require, by certiorari or otherwise, such case to be certified to the Supreme Court for its review and determination, with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court: *And provided further*, That this Act shall not apply to any case involving only the construction of section one, or any portion thereof, of an Act entitled 'An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes,' approved August fifth, nineteen hundred and nine, nor to any case involving the construction of section two of an Act entitled 'An Act to promote reciprocal trade relations with the Dominion of Canada, and for other purposes,' approved July twenty-sixth, nineteen hundred and eleven."

Approved, August 22, 1914.

(T. D. 34748.)

Plumage.

T. D. 34518 of June 6, 1914, not applicable to prohibited plumage taken to non-contiguous foreign territory.

TREASURY DEPARTMENT, *September 2, 1914.*

SIR: The department is in receipt of your letter of the 26th ultimo, in which you state that, in accordance with the authority contained in T. D. 34518, you permitted a passenger to register a hat trimmed with bird of paradise plumes for the purpose of furnishing the necessary evidence that the article was taken abroad by her with a definite intention of returning the same to the United States, thus exempting it from the prohibition contained in paragraph 347 of the tariff act.

T. D. 34518, to which you refer, covers a case where a resident of the United States crossed into Canada and remained there for an hour, and the department held that the taking out of prohibited

plumage under these circumstances did not constitute an exportation from the United States. The decision in question is not applicable, however, to articles taken to noncontiguous foreign territory. The department has declined to extend T. D. 34518 to cover cases of this character, and you are therefore instructed that you should refuse to register any prohibited plumage.

Respectfully, ANDREW J. PETERS,
(92655-27.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 34749.)

Philippine certificates of origin.

Customs officers instructed relative to the execution of such certificates.

TREASURY DEPARTMENT, *September 3, 1914.*

To collectors and other officers of the customs:

The Secretary of War has informed the department that the collector of internal revenue for the Philippine Islands has authorized Mr. A. B. Powell, chief clerk, and Mr. F. Lafont, clerk, of his bureau, to sign certificates of origin covering tobacco products shipped from the islands to the United States for the collector, by themselves, respectively, such documents to be authenticated by the official seal of the collector of internal revenue.

Customs officers are therefore hereby instructed to accept such certificates so signed when they bear the official seal of the said collector.

(78348.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 34750.)

Anthracene oil.

Anthracene oil of a specific gravity of from 1 to 1.13 and yielding a distillate of 50 per cent or more from 270° to 400° C., free of duty under paragraph 452, tariff act of 1913.

TREASURY DEPARTMENT, *September 3, 1914.*

SIR: The department duly received your letter of April 30 last, in regard to the classification of so-called creosote oil imported through the port of Galveston.

It appears that a sample of the oil was forwarded by the collector to the appraiser at your port, and the appraiser stated that, based upon the chemist's report, the oil, if imported through that port, would have been entered free of duty as anthracene oil under paragraph 452 of the tariff act.

In this regard I have to advise you that the question of what oil is entitled to classification as anthracene oil has been the subject of a careful investigation by the department, and as a result thereof it concurs in the views expressed by the appraiser at the port of New York in his letters of the 6th ultimo and April 20 last that commercial anthracene oil has a specific gravity of from 1 to 1.13, and that it yields a distillate of about 50 per cent or more from 270° to 400° C., and may or may not contain crystallized anthracene. Coal-tar oils, therefore, possessing the physical properties of the oil above specified are entitled to admission free of duty as anthracene oil. You will be governed accordingly.

Respectfully, ANDREW J. PETERS,
(67673.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34751.)

Split bamboo.

Split bamboo not in the form of sticks suitable for use in the manufacture of articles specified in paragraph 648, tariff act of 1913, dutiable as manufactures of wood under paragraph 176 of the said act.

TREASURY DEPARTMENT, *September 4, 1914.*

SIR: I have to acknowledge the receipt of your letter of the 25th ultimo, transmitting a communication from the appraiser dated the 8th idem, in which he reports a variance in practice in the classification of so-called split bamboo, samples representing the merchandise being submitted.

It appears that split bamboo like Exhibit A is classified at one port as a manufacture of wood at the rate of 15 per cent ad valorem under paragraph 176 of the tariff act, while at another it is admitted free of duty under paragraph 648 of the said act. It further appears that split bamboo like Exhibit B, which is used in making brooms, is admitted free of duty under the said paragraph, following the decision of the Board of United States General Appraisers reported in G. A. 5315 (T. D. 24332).

You express the opinion that bamboo, in order to be free of duty under paragraph 648, must be in stick form and either in the rough or not further advanced than cut into lengths suitable for use in the manufacture of the articles specified in the said paragraph.

In Abstract 27574 (T. D. 321 9) the Board of General Appraisers overruled a protest which claimed that pieces of bamboo cut into strips of equal length and width and adapted to a particular use

should be free of duty as bamboo, unmanufactured, under paragraph 113 of the tariff act of 1909, but in a later decision, Abstract 36027 (T. D. 34609), sustained the claim of the importers that certain slab rattan and broom or split rattan was entitled to free entry under the same paragraph and act.

The department concurs in the position taken by the board in Abstract 27574, and as the samples submitted show that they represent articles which are not sticks of bamboo in the rough or suitable only for use in the manufacture of articles specified in paragraph 648, it is of the opinion that the merchandise does not fall within the scope of the said paragraph, and is properly dutiable as manufactures of wood under paragraph 176 of the said act. You will be governed accordingly.

Respectfully, ANDREW J. PETERS,
(102827.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34752.)

Classification of British spirits for the assessment of countervailing duty.

Collectors instructed relative to classification of British spirits for the purpose of assessing countervailing duty under T. D. 34466.

TREASURY DEPARTMENT, *September 4, 1914.*

To collectors and other officers of the customs:

The department has received inquiries from collectors as to how certain brands of British spirits should be classified for the assessment of countervailing duty under T. D. 34466 of May 25, 1914.

Collectors are informed that there is no need for the publication of lists of the brands of British spirits showing their classification, respectively, as "Plain British" or "compounded" spirits, inasmuch as the British commissioner of customs and excise has stated that but one article, namely, whisky (Scotch, Irish, and all other brands) receives upon exportation from Great Britain the lower allowance of 3d. per gallon, all other spirits not methylated spirits coming under the head of "compounded" and receiving the higher allowance of 5d. upon exportation from Great Britain.

As a general rule this information should be followed, therefore, in classifying British spirits for the purpose of assessing countervailing duty. Where, however, the consul has made a notation on the invoice which indicates an exception to this rule, liquidation should be suspended and the papers forwarded to the department for instructions.

(75418.) WM. P. MALBURN, *Assistant Secretary.*

(T. D. 34753.)

Designation of present customs collection districts by numbers.

TREASURY DEPARTMENT, *September 4, 1914.*

To collectors of customs and others concerned:

The following Executive order, dated the 27th of August, 1914, officially designating the present customs collection districts by numbers, is published for your information:

Hereafter, under the provisions of the act of Congress approved August 1, 1914, making appropriations for the sundry civil expenses of the Government for the fiscal year ending June 30, 1915, the present customs collection districts are officially designated by numbers and will be known as follows:

The district of Maine and New Hampshire to be district No. 1.
The district of Eastern Vermont to be district No. 2.
The district of Western Vermont to be district No. 3.
The district of Massachusetts to be district No. 4.
The district of Rhode Island to be district No. 5.
The district of Connecticut to be district No. 6.
The district of St. Lawrence to be district No. 7.
The district of Rochester to be district No. 8.
The district of Buffalo to be district No. 9.
The district of New York to be district No. 10.
The district of Philadelphia to be district No. 11.
The district of Pittsburgh to be district No. 12.
The district of Maryland to be district No. 13.
The district of Virginia to be district No. 14.
The district of North Carolina to be district No. 15.
The district of South Carolina to be district No. 16.
The district of Georgia to be district No. 17.
The district of Florida to be district No. 18.
The district of Mobile to be district No. 19.
The district of New Orleans to be district No. 20.
The district of Sabine to be district No. 21.
The district of Galveston to be district No. 22.
The district of Laredo to be district No. 23.
The district of El Paso to be district No. 24.
The district of Eagle Pass to be district No. 25.
The district of Arizona to be district No. 26.
The district of Southern California to be district No. 27.
The district of San Francisco to be district No. 28.
The district of Oregon to be district No. 29
The district of Washington to be district No. 30.
The district of Alaska to be district No. 31.
The district of Hawaii to be district No. 32.
The district of Montana and Idaho to be district No. 33.
The district of Dakota to be district No. 34.
The district of Minnesota to be district No. 35.
The district of Duluth and Superior to be district No. 36.
The district of Wisconsin to be district No. 37.
The district of Michigan to be district No. 38.
The district of Chicago to be district No. 39.
The district of Indiana to be district No. 40.
The district of Ohio to be district No. 41.
The district of Kentucky to be district No. 42.

The district of Tennessee to be district No. 43.
The district of Iowa to be district No. 44.
The district of St. Louis to be district No. 45.
The district of Omaha to be district No. 46.
The district of Colorado to be district No. 47.
The district of Utah and Nevada to be district No. 48.
The district of Porto Rico to be district No. 49.

WM. P. MALBURN, *Acting Secretary.*

(T. D. 34754—G. A. 7596.)

Articles made in part of braid.

Lamp shades trimmed with braid are dutiable as "articles made * * * in part of" braid under paragraph 358, act of 1913, and not as "manufactures of silk, or of which silk or silk and india rubber are the component materials of chief value" under paragraph 318.

United States General Appraisers, New York, September 3, 1914.

In the matter of protest 738035 of Morimura Bros. against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers; FISCHER, G. A., not participating).

COOPER, *General Appraiser:* Certain lamp shades were classified by the collector as "articles, appliquéd" and duty was taken at the rate of 60 per cent ad valorem under paragraph 358 of the act of 1913. Protestants claim the same to be dutiable as "manufactures of silk" at 45 per cent ad valorem under paragraph 318 of said act.

At the trial six samples of the lamp shades were put in evidence. One of the samples, No. 95068, contains embroidery and all are trimmed with braid. It was undoubtedly on account of this braid decoration that the shades were returned as "appliquéd." Under the ruling in United States *v.* Hamburger (5 Ct. Cust. Appls., —; T. D. 34382), however, such trimming does not constitute an appliqué and these shades are therefore not appliquéd within the meaning of the tariff law. The record shows that silk is the component material of chief value and it is clear that the articles are dutiable under paragraph 318, as claimed, unless there is a more specific provision in the tariff act. Paragraph 358 contains another provision which may apply to these articles, however, which is as follows:

Par. 358. * * * Braids, loom woven and ornamented in the process of weaving, or made by hand, or on any braid machine, knitting machine, or lace machine, and not specially provided for; * * * and articles made in whole or in part of the foregoing fabrics or articles; all of the foregoing of whatever yarns, threads, or filaments composed.

The question thus presented is whether or not the foregoing provision is more specific than the provision in paragraph 318 for—

All manufactures of silk, or of which silk or silk and india rubber are the component materials of chief value, not specially provided for in this section.

Paragraph 386 of the tariff law provides that "if two or more rates of duty shall be applicable to any imported article, it shall pay duty at the highest of such rates;" hence, if we should find that the mer-

chandise is as aptly described in one paragraph as in the other—that is, that the provisions of the two paragraphs are equally specific—it would be our duty to classify it under paragraph 358, which imposes the higher rate. We do not think it necessary to apply this rule, however, because we are of opinion that the provisions in paragraph 358 are narrower and more specific than those in paragraph 318. Braids are a particular class of goods, which may be included in the broad catchall phrase "manufactures of silk," and these lamp shades are "made * * * in part of" braids, which also is a provision in paragraph 358 covering a particular class of articles such as may be included in the general provision for "manufactures of silk" in paragraph 318. It has been held in numerous decisions that the phrase "manufactures of" is a general catchall provision. See Brody *v.* United States (2 Ct. Cust. Appls., 15; T. D. 31573); Thomsen *v.* United States (2 Ct. Cust. Appls., 37; T. D. 31590); United States *v.* Zinn (2 Ct. Cust. Appls., 419; T. D. 32171). Furthermore, Congress has in paragraph 358 levied a duty of 60 per cent ad valorem on braids, and it is reasonable to assume that by inserting in the paragraph the words "and articles made wholly or in part of any of the foregoing fabrics or articles," which includes braids, Congress intended that any article, not specially enumerated in the act, which is made from braids, in whole or in part, should be subject to duty at the same rate as the braids from which it is in part made.

In consonance with the views herein expressed, we hold that the lamp shades in question, although not appliquéd, are nevertheless dutiable at 60 per cent ad valorem under the latter part of paragraph 358.

The protest is overruled.

(T. D. 34755—G. A. 7597.)

Clothing in part of braid.

A dress suit, composed of wool and trimmed on the outside seam of the trousers legs with braid, is dutiable at 35 per cent ad valorem as "clothing, ready-made, * * * composed wholly or in chief value of wool" under paragraph 291, act of 1913, and not as "wearing apparel, * * * appliquéd" or as "articles made * * * in part of braid" at 60 per cent ad valorem under paragraph 358.

United States General Appraisers, New York, September 3, 1914.

In the matter of protest 735941 of United States Express Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers; FISCHER, G. A., not participating).

COOPER, *General Appraiser:* The merchandise covered by this protest consists of one dress suit. It was classified for duty as "appliquéd wearing apparel" under paragraph 358 of the tariff act of 1913, the pertinent part of which is as follows:

Par. 358. * * * Embroideries, wearing apparel, handkerchiefs, and all articles or fabrics embroidered in any manner by hand or machinery, whether with a plain or fancy initial, monogram, or otherwise, or tamboured, appliquéd, or scalloped by hand or machinery, any of the foregoing by whatever name known; * * *.

The importers claim that the article is properly dutiable at 35 per cent ad valorem under the provisions of paragraph 291, which is as follows:

Par. 291. Clothing, ready-made, and articles of wearing apparel of every description, including shawls whether knitted or woven, and knitted articles of every description made up or manufactured wholly or in part, and not specially provided for in this section, composed wholly or in chief value of wool * * *.

The record shows that the merchandise is a dress suit composed of wool, that two strips of braid were sewed on the legs of the trousers down the outer seam, and that wool is the component material of chief value in the completed article.

The United States Court of Customs Appeals, in the case of United States *v.* Hamburger (5 Ct. Cust. Appls., —; T. D. 34382), held that a trimming of this character sewed to an article of wearing apparel does not constitute an appliqué, and under that decision the merchandise in question is not appliquéd. The attorney for the Government claims, however, that, although this merchandise may not be appliquéd, it is dutiable under the same paragraph by virtue of the provisions for—

Braids, loom woven and ornamented in the process of weaving, or made by hand, or on any braid machine, knitting machine, or lace machine, and not specially provided for; * * * and articles made in whole or in part of any of the foregoing fabrics or articles.

The question thus presented seems to find its appropriate answer in the well-known rule that an *eo nomine* provision is more specific than a provision couched in words of general description. It is immediately apparent that the *eo nomine* provision for "clothing, ready-made," is more specific than that for "articles made wholly or in part of braids" and must control the classification in case the merchandise nominally falls within both paragraphs. We accordingly hold that the merchandise is properly dutiable at 35 per cent ad valorem under paragraph 291 of said act.

The protest is sustained.

(T. D. 34756.)

Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, Somerville, and Hay.

BEFORE BOARD 1, AUGUST 28, 1914.

No. 86403.—SHOE BUCKLES—JEWELRY.—Protest 697842 of B. Altman & Co. (New York). Opinion by Sullivan, G. A.

Protest overruled as to shoe buckles classified at 85 per cent and claimed dutiable as jewelry under paragraph 448, tariff act of 1909.

No. 36404.—JEWELRY.—Protests 570504, etc., of B. Altman & Co. et al. (New York). Opinion by Sullivan, G. A.

Articles commonly and commercially known as jewelry were held dutiable accordingly under paragraph 448, tariff act of 1909, as claimed. Cohn *v.* United States (4 Ct. Cust. Appls., 378; T. D. 33536) followed.

No. 36405.—TOY JEWELRY.—Protests 571329, etc., of B. Illfelder & Co., and protest 649411 of D. Ottensoser (New York). Opinions by Sullivan, G. A.

Cheap jewelry classified under paragraph 448, tariff act of 1909, was claimed dutiable as toys (par. 431). Protests overruled. Illfelder *v.* United States (1 Ct. Cust. Appls., 109; T. D. 31115), United States *v.* Kraemer (5 Ct. Cust. Appls.,—; T. D. 34474), and United States *v.* Bernard (5 Ct. Cust. Appls., —; T. D. 34328) followed.

No. 36406.—IMITATION JET.—Protest 665325 of Abraham & Straus (New York). Opinion by Sullivan, G. A.

On the authority of United States *v.* Baierle (1 Ct. Cust. Appls., 457; T. D. 31506) imitation jet articles were held dutiable under paragraph 109, tariff act of 1909, as claimed.

No. 36407.—PYROXYLIN ARTICLES.—Protest 675179 of H. B. Claflin Co. (New York). Opinion by Sullivan, G. A.

Collar supporters made of celluloid with attached pins, composed of a metal stem set with imitation precious stones, classified as jewelry under paragraph 448, tariff act of 1909, were held dutiable as articles of pyroxylin (par. 17).

No. 36408.—BEADED ARTICLES.—Protest 631332 of Maurice B. Carlin (Baltimore). Opinion by Sullivan, G. A.

Protest overruled as to merchandise classified as beaded articles under paragraph 421, tariff act of 1909.

No. 36409.—IMITATION PRECIOUS STONES.—Protest 609332 of W. E. Flory & Co. (New York). Opinion by Sullivan, G. A.

On the authority of Abstract 26497 (T. D. 31851) imitation jewels pierced at both ends, classified as manufactures of paste under paragraph 109, tariff act of 1909, were held dutiable as imitation precious stones (par. 449).

No. 36410.—BEADS.—Protests 609930, etc., of G. Hirsch's Sons (New York). Opinion by Sullivan, G. A.

Protests overruled as to imitation jewels perforated at both ends, intended to be sewn on wearing apparel, classified as manufactures of paste under paragraph 109, tariff act of 1909, and claimed dutiable as imitation precious stones (par. 449). United States *v.* American Bead Co. (3 Ct. Cust. Appls., 509; T. D. 33166) and Abstract 35260 (T. D. 34321) followed.

No. 36411.—HATPIN TOPS.—Protest 579768 of Samstag & Hilder Bros. (New York). Opinion by Sullivan, G. A.

Hatpin tops in the form of cubes and disks in imitation of onyx and jet, classified as manufactures of glass or paste under paragraph 109, tariff act of 1909, were held dutiable as imitation precious stones (par. 449). G. A. 7158 (T. D. 31254) followed.

No. 36412.—IMITATION PRECIOUS STONES.—Protests 713278, etc., of F. Wm. Gertzen Co., and protests 675244, etc., and 677443, etc., of Albert Lorsch & Co. et al. (New York). Opinions by Sullivan, G. A.

On the authority of G. A. 7155 (T. D. 31234) imitation precious stones on wire, classified under paragraphs 199 and 109, tariff act of 1909, were held dutiable under paragraph 449.

No. 36413.—PROTESTS OVERRULED.—Protest 630867–41782 of Klein Bros. Lapidary Co. (Chicago), and protest 602173 of Abraham & Straus (New York). Opinions by Sullivan, G. A.

Protests unsupported; overruled.

No. 36414.—FISH IN TINS—HERRINGS.—Protests 543223, etc., of Park & Tilford (New York). Opinion by Brown, G. A.

Certain herrings were held dutiable under paragraph 272, tariff act of 1909, and mackerel under paragraph 273, as claimed. Protests sustained in part.

BEFORE BOARD 2, AUGUST 28, 1914.

No. 36415.—APPLIQUÉD WEARING APPAREL.—Protest 741618 of Chas. H. Levitt & Co. (New York). Opinion by Howell, G. A.

On the authority of United States *v.* Hamburger (5 Ct. Cust. Appls., —; T. D. 34382) children's cotton dresses and aprons with fancy ribbons or tape sewed about the neck, armholes, yoke, or bottom were held not to be appliquéd within the meaning of paragraph 358, tariff act of 1913, but dutiable as cotton wearing apparel (par. 256), as claimed.

No. 36416.—SILK HAIR NETS.—Protest 731732 of W. N. Proctor Co. (Boston). Opinion by Howell, G. A.

Silk hair nets classified as nets under paragraph 358, tariff act of 1913, were claimed dutiable as silk wearing apparel (par. 317). Protest overruled. G. A. 7570 (T. D. 34494) followed.

No. 36417.—COTTON WEARING APPAREL IN PART OF LEVER LACE.—Protest 722121 of Strawbridge & Clothier, and protest 715163 of John L. Vandiver (Philadelphia). Opinions by Howell, G. A.

Altman *v.* United States (5 Ct. Cust. Appls., —; T. D. 34251) followed as to cotton wearing apparel made in part of Lever lace, classified under paragraph 350, tariff act of 1909, and claimed dutiable under paragraph 349. Protests sustained in part.

No. 36418.—PROTESTS OVERRULED.—Protests 732593, etc., of Stern & Stern (New York). Opinion by Howell, G. A.

Protests unsupported; overruled.

No. 36419.—PROTESTS ABANDONED.—Protests 698018, etc., of C. H. Langley et al. (Boston and Chicago).

Protests abandoned.

BEFORE BOARD 3, AUGUST 28, 1914.

No. 36420.—COVERINGS OF LIQUIDS AND SEMILIQUIDS.—Protests 267485, etc., of Zinkeisen & Co. (New York). Opinion by Somerville, G. A.

United States *v.* Peabody (3 Ct. Cust. Appls., 130; T. D. 32383) followed as to coverings of liquids and semiliquids. Protests sustained in part.

BEFORE BOARD 1, AUGUST 31, 1914.

No. 36421.—PRECIOUS STONES—PEARLS.—Protest 711871 of American Express Co. (New York). Opinion by Sullivan, G. A.

Genuine pearls, classified as imitation at 20 per cent ad valorem, were held dutiable at 10 per cent under paragraph 449, tariff act of 1909, as claimed.

No. 36422.—Articles of Personal Adornment.—Protest 607758 of American Express Co. (Boston). Opinion by Sullivan, G. A.

So-called "jet articles," found to be ornamented with precious stones or composed in chief value of silver, were held properly classified at 85 per cent ad valorem under paragraph 448, tariff act of 1909, rather than under paragraph 109, as claimed.

No. 36423.—Rosaries.—Protest 632740–41970 of John P. Daleiden Co. (Chicago). Opinion by Sullivan, G. A.

Rosaries classified as manufactures of metal under paragraph 199, tariff act of 1909, were held dutiable as manufactures of wood (par. 215). G. A. 7053 (T. D. 30731) followed.

No. 36424.—Glass—Butzen.—Protest 670539–43141 of American Importing Co. (Chicago). Opinion by Sullivan, G. A.

Butzen composed of colored glass, similar in appearance to the face of a diamond, classified under paragraph 98, tariff act of 1909, was held dutiable under paragraph 109, as claimed. Protest sustained in part.

No. 36425.—Optical Lenses for Bicycle Lamps.—Protest 677311–43222 of American Importing Co. (Chicago). Opinion by Sullivan, G. A.

Optical lenses for bicycle lamps, classified as lenses, with the edges ground or beveled, under paragraph 106, tariff act of 1909, and found to be not ground but cast, were held dutiable as lenses with the edges unground under the same paragraph.

No. 36426.—Jewelry—Imitation Jet—Vanity Cases—Smokers' Articles—Rubber Jewelry—Hand Bags—Bone Jewelry—Beaded Bags.—Protests 420158, etc., of Abraham & Straus, protests 534343, etc., of Aitken, Son & Co. et al., and protests 424943, etc., of Stern Bros. et al. (New York), and protest 729570 of John Wanamaker (Philadelphia). Opinions by Sullivan, G. A.

Cohn *v.* United States (4 Ct. Cust. Appls., 378; T. D. 33536) followed as to articles commonly or commercially known as jewelry. On the authority of United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506) imitation jet articles were held dutiable under paragraph 109, tariff act of 1909. Vanity cases, etc., were held dutiable as manufactures of metal (par. 199). G. A. 7129 (T. D. 31089) followed. Smokers' articles were held dutiable under paragraph 475. Rubber and bone jewelry classified under paragraph 448 was held dutiable as manufactures of rubber or bone (par. 463). G. A. 7019 (T. D. 30612) and Abstract 27271 (T. D. 32073) followed. Ladies' hand bags were held dutiable under paragraph 402. Beaded bags were held dutiable as articles in chief value of beads (par. 421). Protests sustained in part.

No. 36427.—Protests Overruled.—Protest 729562 of F. B. Vandegrift & Co. (Philadelphia). Opinion by Sullivan, G. A.

Protest unsupported; overruled.

No. 36428.—Fish in Tins.—Protests 431014, etc., of F. H. Leggett & Co. (New York), and protests 691617, etc., of E. H. Bailey & Co., et al. (Philadelphia et al.). Opinions by Brown, G. A.

United States *v.* Miller (5 Ct. Cust. Appls., —; T. D. 34443) and United States *v.* Smith (4 Ct. Cust. Appls., 70; T. D. 33312) followed as to fish in tins.

No. 36429.—Protests Abandoned.—Protests 66873a, etc., of Worthington, Smith & Co. et al. (New York), and protests 152541, etc., of John Wanamaker et al. (Philadelphia et al.).

Protests abandoned.

BEFORE BOARD 3, AUGUST 31, 1914.

No. 86430.—WOOD PULP AND PAPER—CANADIAN RECIPROCITY.—Protests 664183, etc., of the Geo. Irish Paper Co. (Buffalo et al.), and protests 620879, etc., of Scandinavian-American Trading Co. et al. (New York et al.). Opinions by Somerville, G. A.

American Express Co. *v.* United States (4 Ct. Cust. Appls., 146; T. D. 33434) and G. A. 7532 (T. D. 34185) followed as to Canadian reciprocity.

BEFORE BOARD 1, SEPTEMBER 3, 1914.

No. 86431.—PROTESTS OVERRULED.—Protests 263018, etc., of Reed & Keller et al. (New York). Opinion by McClelland, G. A.

Protests unsupported; overruled.

No. 86432.—MUSICAL INSTRUMENTS—CASTANETS.—Protest 668865–43076 of Bernard, Judae & Co. (Chicago). Opinion by Sullivan, G. A.

Castanets classified as musical instruments under paragraph 467, tariff act of 1909, were held dutiable as manufactures of wood (par. 215). Abstract 30932 (T. D. 33055) followed.

No. 86433.—CHATELAINES.—Protests 604039, etc., of Malouf & Dowaliby (New York). Opinion by Sullivan, G. A.

Chatelaines classified under paragraph 448, tariff act of 1909, were held dutiable as manufactures of metal (par. 199). G. A. 7129 (T. D. 31089) followed.

No. 86434.—CHEMICAL GLASSWARE.—Protests 704641, etc., of O. G. Hempstead & Son et al. (Philadelphia). Opinion by Sullivan, G. A.

On the authority of Scientific Supply Importing Co. *v.* United States (5 Ct. Cust. Appls., —; T. D. 34094), flasks, beakers, and funnels of blown glass were held properly classified under paragraph 98, tariff act of 1909.

No. 86435.—AMBER JEWELRY.—Protest 712698 of Stern Bros. (New York). Opinion by Sullivan, G. A.

Cuff links and brooches in chief value of amber, classified under paragraph 448, tariff act of 1909, were held dutiable as manufactures of amber (par. 462). G. A. 6657 (T. D. 28390) followed.

No. 86436.—IMITATION PEARL BEADS.—Protests 675120, etc., of A. Fusenot Co. et al. (Los Angeles et al.), and protests 570508, etc., of the American Express Co. et al. (New York). Opinions by Sullivan, G. A.

Lorsch *v.* United States (5 Ct. Cust. Appls., —; T. D. 34132) followed as to imitation pearl beads.

No. 86437.—STRUNG BEADS.—Protests 675207 and 681405, etc., of F. Wm. Gertzen Co. et al. (New York). Opinions by Sullivan, G. A.

Imitation pearls on wire classified as parts of jewelry under paragraph 448, tariff act of 1909, were held dutiable as imitation precious stones (par. 449). G. A. 7155 (T. D. 31234) followed. Protests sustained in part.

No. 86438.—JEWELRY—IMITATION JET.—Protests 485093–36802, etc., and 565605–40616 of Bernard, Judae & Co. (Chicago), protests 685162, etc., of C. H. Eden & Co. et al., protest 488392 of Emrich, King & Schorsch, protests 590420, etc., of Knauth, Nachod & Kuhne et al., and protests 618612, etc., of Wiener Bros. (New York), and protest 400973 of M. Marcuse & Co. (San Francisco). Opinions by Sullivan, G. A.

Cohn *v.* United States (4 Ct. Cust. Appls., 378; T. D. 33536) followed as to articles commonly or commercially known as jewelry. United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506) followed as to imitation jet jewelry. Protests sustained in part.

No. 36439.—Protests Unsupported.—Protests 741720–49393, etc., of International Forwarding Co. et al. (Chicago et al.), protests 719297, etc., of Faber & Hein et al. (New York), protests 481814, etc., of A. Bader Co. et al., and protests 571601, etc., of Soy Kee & Co. et al. (New York et al.). Opinions by Sullivan, G. A.

Protests unsupported; overruled.

No. 36440.—Fur Hats.—Protest 729915 of Angel, Suarez & Hermanos (San Juan).

Brown, *General Appraiser:* The merchandise was classified as wearing apparel (hats) composed in part of wool, under paragraph 382, act of 1909, by virtue of paragraph 310 of the act of October 3, 1913. Duty was accordingly collected thereon at the rate of 44 cents per pound and 60 per cent ad valorem. The protestants claim that the hats are composed of fur and are properly dutiable at 45 per cent under paragraph 354, act of 1913, as "hats * * * composed wholly or in chief value of fur of the rabbit, beaver, or other animals."

The case was submitted on an analysis of the official sample made by the chemist in the appraiser's laboratory at the port of New York. From this analysis we find that the hats are composed in chief value of fur of the rabbit, and they are properly dutiable as claimed.

Paragraph 354 of the act of 1913 is not limited by the words "not specially or otherwise provided for." Therefore, comparing this paragraph with paragraph 382 of the old act, paragraph 354, act of 1913, covering hats "in chief value of fur" is controlling over the provision in paragraph 382, act of 1909, for "wearing apparel in part of wool." (See Hartranft *v.* Meyer, 135 U. S., 237.)

Again, the provision for hats is more specific than the general provision for wearing apparel.

See, also, for the effect of the provisions of paragraph 310, act of 1913, G. A. 7577 (T. D. 34599), G. A. 7578 (T. D. 34600).

The protest is sustained.

No. 36441.—Wool Dress Goods.—Protest 653697 of Frank & Lambert (New York). Opinion by Brown, G. A.

Cloth of wool weft and cotton warp, classified as wool dress goods under paragraph 380, tariff act of 1909, was claimed dutiable under paragraph 378. Protest overruled.

No. 36442.—Animals in Alcohol.—Protest 647627–42406 of Chas. D. Stone & Co. (Chicago). Opinion by Brown, G. A.

Carcasses of animals imported packed in spirits were held properly classified under paragraph 2, tariff act of 1909, as articles consisting of animal objects in alcohol.

No. 36443.—Fish in Tins.—Protests 719044, etc., of P. Pastene & Co. (Boston), protests 639122, 666534, and 720931 of Rudolph Oelsner, protests 446316, etc., of Reiss & Brady et al. (New York), and protests 465400, etc., of Jas. P. Smith & Co. et al. (New York et al.). Opinions by Brown, G. A.

United States *v.* Miller (5 Ct. Cust. Appls., —; T. D. 34443) and United States *v.* Smith (4 Ct. Cust. Appls., 70; T. D. 33312) followed as to fish in tins.

Before Board 2, September 3, 1914.

No. 36444.—Protests Abandoned.—Protests 194389, etc., of the Rosenthal-Sloan Millinery Co. et al. (St. Louis et al.).

Protests abandoned.

BEFORE BOARD 3, SEPTEMBER 3, 1914.

No. 36445.—WOOD PULP—CANADIAN RECIPROCITY.—Protests 585257, etc., of Page, Newell & Co. (Boston). Opinion by Somerville, G. A.

American Express Co. *v.* United States (4 Ct. Cust. Appls., 146; T. D. 33434) followed as to wood pulp manufactured in Sweden.

No. 36446.—COVERINGS OF LIQUIDS AND SEMILIQUIDS.—Protests 316592, etc., of C. Bischoff & Co. (New York). Opinion by Somerville, G. A.

United States *v.* Peabody (3 Ct. Cust. Appls., 130; T. D. 32383) followed as to coverings of liquids and semiliquids. Protests sustained in part.

(T. D. 34757.)

Touring automobiles—Consular certificate.

Consular certificate required for automobiles imported under bond for touring purposes, and also a certified invoice if automobile is valued at over $100. No form of certificate prescribed for automobiles brought to this country for temporary stay of not exceeding seven days.

TREASURY DEPARTMENT, *September 8, 1914.*

SIR: I have the honor to acknowledge receipt of your letter of the 25th ultimo, transmitting a copy of dispatch from the consul general at large, dated Ottawa, Canada, July 8, 1914, in regard to the different documents issued by consuls in Canada to owners of automobiles who are coming to this country from Canada for a temporary stay of not exceeding seven days or for touring purposes.

This department's regulations (T. D. 32799) provide that when the owner of a foreign automobile desiring to enter this country for a period of not exceeding seven days is well known to the customs officers the collector may admit such machine without requiring the production of a consular certificate of identification. Such certificate is therefore required only when the owner is unknown to the customs officers, and is intended merely as the means of identifying the owner and to advise the collector of the purpose for which the automobile described therein is brought to this country. It is not believed that a form should be prescribed for this certificate, as it is an informal document, which may be issued by the consul in any form desired, provided it contains the necessary information.

Automobiles imported under six months' bond for touring purposes are now entered under the provisions of subsection 4 of paragraph J of section 4 of the present tariff act and T. D. 33806 of October 24, 1913, or section 3 of T. D. 32799.

While no form of consular certificate has been prescribed under the present law, the department is of the opinion that the form to be

used should be the same whether the automobiles are brought to the United States from contiguous or noncontiguous foreign countries. It is suggested that the following form of certificate be adopted and that the American consular officers be instructed to issue the same upon due application:

——— ———,

——— ———.

I, ——— ———, do hereby declare that I reside at No. ——— ——— Street, in the city of ———, in the country of ———, and that I am the owner, shipper, or agent for the owner or shipper of an automobile described as follows:

Touring or runabout; manufactured by ———; at ———; manufacturer's No. ———; number of cylinders, ———; seating capacity, ———; foreign license No. ———; licensed in ———; equipped with wind shield, ———; number of extra tires, ———. Other extra parts, ———.

I further declare that the automobile is imported for touring purposes only and that the same is not imported for sale or for sale on approval.

——— ———.

———, ———.

I, ——— ———, ——— consul of the United States at ———, ———, do hereby certify that ——— ———, whose name is subscribed to the foregoing statement, is the identical person he represents himself to be.

In witness whereof I have hereunto set my hand and official seal this the ——— day of ———, 19—.

——— ———,

Consul of the United States.

In view of the provisions of paragraph E of section 3 of the existing tariff act, duly certified invoices are required for automobiles valued at over $100 imported under bond for touring purposes.

By direction of the Secretary.

Respectfully, WM. P. MALBURN,

(85075.) *Assistant Secretary.*

The SECRETARY OF STATE.

(T. D. 34758.)

Export of arms and ammunition to Mexico.

Customs officers instructed relative to exports of arms and ammunition to Mexico.

TREASURY DEPARTMENT, *September 9, 1914.*

To collectors of customs and other customs officers on the Mexican frontier:

In view of the restoration of peace in Mexico, collectors and other officers of customs may in future treat arms and ammunition as ordinary commercial shipments and permit them to go forward accordingly.

(82411-15.) W. G. MCADOO, *Secretary.*

(T. D. 34759.)

Bills of health—Canal Zone.

The issuance by medical officers of the United States Public Health Service of special original and supplemental bills of health to vessels departing from United States ports to the Canal Zone.

[Circular No. 36.]

TREASURY DEPARTMENT, *September 3, 1914.*

To medical officers of the United States Public Health Service, collectors of customs, and others concerned:

Upon application on the part of masters of vessels bound from United States ports to the Canal Zone, either original or supplemental bills of health, upon special "Canal Zone" forms, will be issued.

A small supply of these forms is inclosed herewith [1] and a larger supply may be obtained upon letter requisition. These forms are to be issued by United States Public Health Service officers or by collectors of customs under the conditions set forth for the issuance of Form 1964, "Port sanitary statement," as provided for in Department Circular No. 25 of April 9, 1914.

W. G. MCADOO, *Secretary.*

(T. D. 34760.)

American goods returned.

Appeal directed from decision of the Board of United States General Appraisers of July 13, 1914, G. A. 7586 (T. D. 34650), involving the classification of merchandise claimed to be American goods returned.

TREASURY DEPARTMENT, *September 11, 1914.*

SIR: I have to acknowledge the receipt of your letter of the 1st instant, inviting attention to the decision of the Board of United States General Appraisers, dated July 13, 1914, G. A. 7586 (T. D. 34650), involving the classification of certain merchandise claimed to be American goods returned.

In view of the importance of the issue, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the board's decision, in accordance with the provisions of subsection 29 of section 28 of the act of August 5, 1909.

Respectfully, WM. P. MALBURN,
(102643.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

---

[1] Forms should be ordered from the Bureau of Public Health Service, Washington, D. C.

(T. D. 34761.)

Solidonia fiber.

Solidonia fiber dutiable as a nonenumerated manufactured article at the rate of 15 per cent ad valorem under paragraph 385, tariff act of 1913.

TREASURY DEPARTMENT, *September 11, 1914.*

SIR: I have to acknowledge the receipt of your letter of the 3d ultimo, further in regard to the classification of merchandise described as solidonia fiber, which, it appears from an investigation made by this department, is produced from the solidonia plant, a cultivated specimen of urticacea, and is similiar to ramie, which also belongs to the urticacea family.

It further appears that the plant has been chemically treated to produce the fiber and that it has also been subjected to the process of carding.

In view of the foregoing, the department concurs in the views expressed by the appraiser at your port and the appraiser at the port of Boston that the merchandise in question is properly dutiable as a nonenumerated manufactured article at the rate of 15 per cent ad valorem under paragraph 385 of the tariff act of October 3, 1913. You will be governed accordingly.

Respectfully, BYRON R. NEWTON,
(102139.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34762.)

Knitted silk mufflers.

Appeal directed from decision of the Board of United States General Appraisers of July 20, 1914, Abstract 36162 (T. D. 34668), involving the classification of knitted silk mufflers.

TREASURY DEPARTMENT, *September 12, 1914.*

SIR: I have to acknowledge the receipt of your letter of the 1st instant, inviting attention to the decision of the Board of United States General Appraisers of July 20, 1914, Abstract 36162 (T. D. 34668), wherein the board holds that certain knitted silk mufflers, trimmed with silk fringe, which had been assessed with duty at the rate of 60 per cent ad valorem under paragraph 402 of the tariff act of 1909, were properly dutiable at the rate of 50 per cent ad valorem under the provision for mufflers in paragraph 400 of the said act.

In view of the importance of the issue, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the

board's decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act.

Respectfully, BYRON R. NEWTON,
(99968.) *Assistant Secretary.*
ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 34763.)

Abstracts of decisions of the Board of General Appraisers.

Board 1.—McClelland, Sullivan, and Brown. *Board 2.*—Fischer, Howell, and Cooper. *Board 3.*—Waite, Somerville, and Hay.

BEFORE BOARD 1, SEPTEMBER 10, 1914.

No. 36447.—FUR CLIPPINGS.—Protest 668280 of R. F. Lang (New York). Opinion by McClelland, G. A.

Protest overruled as to fur clippings classified under paragraph 439, tariff act of 1909.

No. 36448.—DRESSED GOATSKINS.—Protests 732971, etc., of A. Richter (New York). Opinion by McClelland, G. A.

On the authority of G. A. 7569 (T. D. 34493), dressed goatskins classified at 30 per cent ad valorem under paragraph 348, tariff act of 1913, were held dutiable under the provision for "plates and mats of dog and goat skins" at 10 per cent under the same paragraph.

No. 36449.—ROSARIES.—Protest 680627-43414 of J. P. Daleiden Co. (Chicago). Opinion by Sullivan, G. A.

Rosaries classified as manufactures of metal under paragraph 199, tariff act of 1909, found to be in chief value of wood, were held dutiable under paragraph 215. G. A. 7053 (T. D 30731) followed. Protest sustained in part.

No. 36450.—JEWELRY.—Protest 465660 of the A. B. Closson, jr., & Co. (Cincinnati). Opinion by Sullivan, G. A.

On the authority of Cohn *v.* United States (4 Ct. Cust. Appls., 378; T. D. 33536) and G. A. 6015 (T. D. 26285), necklaces, hatpins, bracelets, and brooches were held to be jewelry and dutiable accordingly under paragraph 448, tariff act of 1909.

No. 36451.—PROTESTS OVERRULED.—Protests 425156, etc., of Albert Lorsch & Co. et al. (New York). Opinion by Sullivan, G. A.

Protests unsupported; overruled.

No. 36452.—FISH IN TINS.—Protest 430527-33265 of the P. V. Bright Brokerage Co. (Chicago), protests 667046, etc., of the Kildall Fish Co. (Minneapolis), and protests 664745, etc., of Jed Frye & Co. et al. and protest 457400 of K. Marks & Co. (New York). Opinions by Brown, G. A.

United States *v.* Miller (5 Ct. Cust. Appls., —; T. D. 34443), United States *v.* Smith (4 Ct. Cust. Appls., 70; T. D. 33312), G. A. 7504 (T. D. 33815), and Smith *v.* United States (5 Ct. Cust. Appls., —; T. D. 34008), followed as to fish in tins.

No. 36453.—PROTESTS ABANDONED.—Protests 235732, etc., of G. Siegle & Co. et al. (New York).

Protests abandoned.

BEFORE BOARD 2, SEPTEMBER 10, 1914.

No. 36454.—ARTICLES MADE ON THE LEVER MACHINE.—Protests 687980, etc., of Simpson-Crawford Co. et al. (New York). Opinion by Howell, G. A.

Protests overruled as to embroidered wearing apparel made in part of Lever lace, also laces, nettings, and other articles made wholly or in part on the Lever or Gothrough machine classified under paragraph 350, tariff act of 1909.

No. 36455.—PROTESTS OVERRULED.—Protests 189701, etc., of J. Donat & Co. et al. (New York). Opinion by Howell, G. A.

Protests unsupported; overruled.

No. 36456.—COLORED COTTON YARN.—Protest 744347 of Lorraine Manufacturing Co. (Boston). Opinion by Cooper, G. A.

Certain colored cotton yarn, found to be number 18, was held dutiable at 10 per cent ad valorem under paragraph 250, tariff act of 1913, as claimed.

No. 36457.—PROTESTS OVERRULED.—Protests 739756, etc., of Farley, Harvey & Co. et al. (Boston), and protests 179856, etc., of Thomas Young, et al. (New York). Opinions by Cooper, G. A.

Protests unsupported; overruled.

BEFORE BOARD 3, SEPTEMBER 10, 1914.

No. 36458.—MODELING CLAY.—Protest 741683 of Strohmeyer & Arpe Co. (New York).

HAY, *General Appraiser:* The merchandise the classification of which forms the subject of this protest is modeling clay. It was assessed by the collector under paragraph 81 of the tariff act of 1913, and is claimed in the protest to be dutiable under paragraph 385 as a nonenumerated manufactured article. The record upon which the case was submitted is meager, consisting of the appraiser's report and the agreement of counsel that the merchandise is the same as that which was the subject of the decision of the United States Circuit Court in Bancel *v.* United States (176 Fed., 132; T. D. 30124). The appraiser's report, so far as the same constitutes a statement of fact, reads as follows:

The merchandise consists of so-called modeling clay composed of calcium sulphate, alumina, zinc, oxide of iron, sulphur, saponifiable oil, and unsaponifiable matter. It is of the same character as the Plastilina, or modeling clay subject of T. D. 32536.

The appraiser in his report goes on to suggest a different classification in view of the change made in the wording of the law of 1913. T. D. 32536, referred to by the appraiser, is United States *v.* The Embossing Co. (3 Ct. Cust. Appls., 220). At the time of the decision of that case, as well as at the time of the decision of the Bancel *v.* United States case, *supra*, paragraph 95 of the act of 1909 read:

Par. 95. Articles and wares composed wholly or in chief value of earthy or mineral substances, not specially provided for in this section, whether susceptible of decoration or not, if not decorated in any manner, thirty-five per centum ad valorem.

This board has held in numerous decisions (Salomon & Bro. et al., G. A. 7128; T. D. 31088; 2 Ct. Cust. Appls., 92; Tamm & Co., G. A. 7235; T. D. 31705; United States *v.* Tamm & Co., 2 Ct. Cust. Appls., 425, etc.) that the phrase "articles and wares composed of" in paragraph 95 of the act of 1909 meant something more than mere substances, and this same view was taken by the Court of Customs Appeals in United States *v.* The Embossing Co., *supra*, where merchandise like that now under consideration was held to be dutiable as a nonenumerated manufactured article. This has been the holding of this board as far back as its decision in Strohmeyer & Arpe Co.'s case, G. A. 6724 (T. D. 28797). The appraiser justifies the change recommended by him in the classification of the merchandise by citing the change in the wording of the law. The change is unquestionably a significant one, and if the record in this case clearly

showed that the article in question was an earthy or mineral substance, wholly or partially manufactured, the classification would, in our judgment, be correct. However, to bring a commodity under a new provision of a tariff law and thereby change a long-established classification, the proof should be clear and convincing that it is such as comes within the wording of the new provision. That proof does not exist in the case at bar and the presumption of correctness which always attaches to the collector's action is overcome by the fact that the merchandise has been definitely classified otherwise for many years and that the reasons given by the appraiser in his report for his advisory classification are not, in our judgment, entirely justified by the facts so far as they are revealed to us. We may take judicial notice of the fact that zinc, oxide of iron, etc., are all mineral substances, but if we do we must also take judicial notice of the fact that saponifiable oil is not a mineral substance. Paragraph 81 provides for earthy or mineral substances, wholly or partially manufactured, but not substances which are in part earthy or mineral. We are left entirely without knowledge as to what portion of the commodity in question is of saponifiable oil, and so long as there is any portion of it which is not entirely negligible, the commodity is not an earthy or mineral substance.

Therefore, upon the record before us the protest must be sustained. The collector is directed to reliquidate the entry assessing the merchandise, as it has heretofore been held by this board, the United States Circuit Court, and the United States Court of Customs Appeals, to wit, as a nonenumerated manufactured article.

No. 36459.—Iron Drums—Gasoline Tanks—Acid Containers.—Protest 729192 of Strong & Trowbridge Co. (New York).

Hay, *General Appraiser:* This is a protest against the assessment of duty on certain iron or steel drums as containers of gasoline, claimed to be free of duty as American goods returned under paragraph 404 of the tariff act of 1913. At the time of the hearing counsel for the Government objected to the introduction of any testimony, upon the ground that certain regulations of the Secretary of the Treasury had not been complied with. The regulation which counsel cites as not having been complied with is to be found in T. D. 30404. That provision upon which counsel evidently relies reads as follows:

> Upon the exportation of iron or steel drums of foreign manufacture which were used upon importation, or are used upon exportation, as containers of acids the collector of customs will issue to the American consular officer for the district to which such drums are exported a certificate in the following form: * * *.

This regulation apparently applies only to such drums as are containers of acids. The objection of counsel, which was taken under advisement at the time of the trial, is therefore overruled and an exception granted. The collector in this case reports that the merchandise contained in these drums was gasoline; that it is not an acid or other chemical; and apparently places his rejection of the importers' claim upon the ground that it is not brought within the purview of paragraph 404. The only language of that paragraph which could apply to the case at bar is "iron or steel drums of either domestic or foreign manufacture used for the shipment of acids or other chemicals which shall have been actually exported from the United States."

There is nothing in the record to show that the gasoline contained in the drums is either an acid or a chemical. This is probably not a matter of which we may take judicial notice, but if it were it would probably be in accordance with the conclusion of the collector. The protest is therefore overruled.

No. 36460.—Montan Wax.—Protest 730369 of Dwyer & Wedemann and protest 722793 of Strohmeyer & Arpe Co. (New York). Opinions by Hay, G. A.

On the authority of Abstract 19431 (T. D. 29173) and Abstract 20887 (T. D. 29644) montan pitch or wax was held entitled to free entry as "wax, vegetable or mineral," under paragraph 707, tariff act of 1909.

No. 36461.—Crushed Stone.—Protests 728372, etc., of W. White (Detroit). Opinion by Hay, G. A.

Stone crushed in a machine expressly designed for that purpose was held properly classified as a nonenumerated manufactured article under paragraph 385, tariff act of 1913, rather than free of duty as stone and sand, rough or unmanufactured (par. 614), as claimed. United States *v.* Graser-Rothe (164 Fed., 205; T. D. 29240) and Rossman *v.* United States (1 Ct. Cust. Appls., 280; T. D. 31321) followed.

No. 36462.—Granito.—Protest 745670 of J. J. Buchey & Co. (Philadelphia). Opinion by Hay, G. A.

Granito classified as earthy or mineral substance wholly or partially manufactured, under paragraph 81, tariff act of 1913, is claimed dutiable as a nonenumerated article (par. 385). Protest, submitted without evidence, overruled.

No. 36463.—Jute Bagging.—Protests 720313–4618, etc., of New Orleans & North Eastern R. R. Co. (New Orleans). Opinion by Hay, G. A.

Old jute bagging classified as waste under paragraph 479, tariff act of 1909, was held entitled to free entry as paper stock (par. 644) as claimed.

No. 36464.—Crude Vegetable Fiber.—Protests 726078–45462, etc., of Fred. H. Haisler et al. (Chicago). Opinion by Hay, G. A.

Vegetable fiber classified under paragraph 480, tariff act of 1909, was claimed free of duty as crude vegetable substances (par. 630). Protests overruled.

No. 36465.—Storage Charges.—Protest 729128 of the W. Bingham Co. (Cleveland). Opinion by Hay, G. A.

Protest against the payment of certain storage charges dismissed, not having been filed within 15 days after payment of the charges. G. A. 6552 (T. D. 27962) and G. A. 7593 (T. D. 34696) cited.

No. 36466.—Basket Trays.—Protest 729816 of T. G. Reid (Savannah). Opinion by Hay, G. A.

Merchandise consisting of a porcelain tray within a basket of wood, the basket found to be chief value, classified under paragraph 80, tariff act of 1913, was held dutiable as a composition of wood, stained or dyed (par. 175).

No. 36467.—Earthenware.—Protest 731261 of Geo. S. Bush & Co. (Portland, Oreg.) Opinion by Hay, G. A.

Protest overruled claiming merchandise classified under paragraph 80, tariff act of 1913, to be dutiable as earthenware (par. 79).

No. 36468.—Weight of Currants.—Protest 731428–2181 of G. W. Sheldon & Co. (Chicago). Opinion by Hay, G. A.

Protest overruled as to weight of currants.

No. 36469.—Spark Plugs.—Protest 731484 of Champion Ignition Co. (Detroit). Opinion by Hay, G. A.

Protest overruled as to spark plugs classified as printed china under paragraph 80, tariff act of 1913. Richard *v.* United States (3 Ct. Cust. Appls., 193; T. D. 32469) followed.

No. 36470.—Shortage.—Protest 738033 of M. Mandel (New York). Opinion by Hay, G. A.

Protest sustained claiming shortage of lace. G. A. 5891 (T. D. 25965) and Abstract 14187 (T. D. 27873) cited.

No. 36471.—JASPER WARE—APPRAISER'S REPORT.—Protest 741880 of Jones, McDuffee & Stratton Co. (Boston). Opinion by Hay, G. A.

Jasper ware, classified as decorated china or porcelain under paragraph 80, tariff act of 1913, was subsequently reported by the appraiser to be dutiable as decorated stoneware (par. 79). Protest overruled, having been submitted without other evidence than the amended report of the appraiser, which was not adopted by the collector.

No. 36472.—JEWELRY BRUSHES—BRUSHES OF WIRE.—Protest 744039 of Worthington & Raymond (New York). Opinion by Hay, G. A.

So-called brass scratch brushes used for polishing gold and jewelry, classified under the provision for brushes of all kinds in paragraph 336, tariff act of 1913, were claimed dutiable as wire (par. 114). Protest overruled.

No. 36473.—PROTEST FEE.—Protest 742188 of Husselrath Importing Co. (New York). Opinion by Hay, G. A.

Protest overruled, the fee provided for in paragraph N, section 3, tariff act of 1913, not having been paid.

No. 36474.—YACHTS OF FOREIGN REGISTER.—Protest 639471 of Edgar Palmer (New York). Opinion by Hay, G. A.

Protest overruled against the exaction of duty under section 37, tariff act of 1909, upon a yacht built in a foreign country, the property of a citizen of the United States. G. A. 6981 (T. D. 30354), Billings *v.* United States (232 U. S., 261; T. D. 34429), United States *v.* Billings (232 U. S., 289; T. D. 34430), Pierce *v.* United States (232 U. S., 290; T. D. 34431), Pierce *v.* United States (232 U. S., 292; T. D. 34432), United States *v.* Goelet (232 U. S., 293; T. D. 34433), United States *v.* Bennett (232 U. S., 299; T. D. 34434), United States *v.* Bennett (232 U. S., 308; T. D. 34435), and Rainey *v.* United States (232 U. S., 310; T. D. 34436) cited.

No. 36475.—SPOOLS CONTAINING SILK YARN.—Protests 655289, etc., of M. J. Corbett & Co. (New York). Opinion by Hay, G. A.

Small wooden or paper spools were claimed to be usual containers of silk yarn. Protests overruled.

No. 36476.—MATI LEAVES.—Protests 699056, etc., of Wm. H. Masson et al. (Baltimore et al.) Opinion by Hay, G. A.

Protests overruled as to ground mati leaves classified as nonenumerated manufactured articles under paragraph 480, tariff act of 1909.

No. 36477.—SCIENTIFIC APPARATUS—TREASURY REGULATIONS.—Protest 717460 of A. W. Fenton, jr. (Cleveland). Opinion by Hay, G. A.

Certain laboratory instruments were held not entitled to free entry under the provision for scientific apparatus in paragraph 650, tariff act of 1909, the regulations of the Secretary of the Treasury not having been complied with.

No. 36478.—MUSICAL INSTRUMENTS—SCIENTIFIC APPARATUS.—Protest 729498 of O. G. Hempstead & Son (Philadelphia). Opinion by Hay, G. A.

An instrument built upon the order of a piano to play a specific part in orchestral recitals, classified as a musical instrument under paragraph 467, tariff act of 1909, was claimed free of duty as scientific apparatus. Protest overruled. G. A. 5532 (T. D. 24902) and Massachusetts General Hospital *v.* United States (112 Fed., 670) followed.

No. 36479.—FITTED LEATHER CASES.—Protests 482170, etc., of Mark Cross Co. et al. (New York). Opinion by Hay, G. A.

Protests submitted upon stipulation of counsel sustained in part as to fitted leather cases classified under paragraph 452, tariff act of 1909.

No. 36480.—Willow Baskets.—Protests 593698, etc., of Mark Cross Co. (New York). Opinion by Hay, G. A.

On the authority of Brody *v.* United States (2 Ct. Cust. Appls., 15; T. D. 31573) willow baskets were held dutiable under paragraph 212, tariff act of 1909, and willow baskets fitted with luncheon sets in chief value of metal under paragraph 199.

No. 36481.—Sewing Baskets—Sufficiency of Protest.—Protests 745702, etc., of C. F. Rumpp & Sons (Philadelphia). Opinion by Hay, G. A.

Sewing baskets classified at 35 per cent ad valorem under paragraph 360, tariff act of 1913, were held dutiable at 30 per cent under the same paragraph. Abstract 34300 (T. D. 34000) followed. A protest setting forth the wrong paragraph but the right claim and description was held sufficient. Abstract 35500 (T. D. 34425) followed.

No. 36482.—Coverings of Liquids and Semiliquids.—Protests 383775, etc., of National Aniline & Chemical Co. (New York). Opinion by Hay, G. A.

United States *v.* Peabody (3 Ct. Cust. Appls., 130; T. D. 32383) followed as to coverings of liquids and semiliquids.

No. 36483.—Coverings of Biscuits.—Protest 309875 of R. H. Macy & Co. and protests 317215, etc., of Moos & Co. et al. (New York). Opinions by Hay, G. A.

Tin cans and baskets containing biscuits were held to be usual coverings on the authority of Abstract 19254 (T. D. 29119).

No. 36484.—Pro Forma Invoice—Clerical Error.—Protest 705934–44708 of Madam Whitney (Chicago). Opinion by Hay, G. A.

United States *v.* Hobbs (3 Ct. Cust. Appls., 256; T. D. 32567) followed as to an entry made upon a pro forma invoice and reliquidated upon the value declared in the consular invoice. Protest overruled claiming that a discount of 10 per cent was omitted from the consular invoice through clerical error. United States *v.* Swedish Produce Co. (4 Ct. Cust. Appls., 223; T. D. 33437), United States *v.* Wyman (4 Ct. Cust. Appls., 264; T. D. 33485), and G. A. 7476 (T. D. 33590) followed.

No. 36485.—Clerical Error.—Protest 736557 of T. D. Downing & Co. (Boston), and protest 748382 of Wm. Hodges & Co. (Philadelphia). Opinions by Hay, G. A.

Protests overruled claiming clerical error. United States *v.* Swedish Produce Co. (4 Ct. Cust. Appls., 223; T. D. 33437), and United States *v.* Wyman (4 Ct. Cust. Appls., 264; T. D. 33485) followed.

No. 36486.—Wood Pulp—Canadian Reciprocity.—Protests 648990, etc., of M. B. Carlin (Baltimore), and protests 687409, etc., of P. McGettrick (Burlington). Opinions by Hay, G. A.

Protests overruled, claiming certain wood pulp to be free of duty under section 2 of the act of July 26, 1911, relating to Canadian reciprocity.

No. 36487.—Wood Pulp and Paper.—Protest 660820 of Wakem & McLaughlin, protests 653538, etc., of Thomas Meadows & Co., protest 734359 of Charles Zepler (New York), protests 585258, etc., of Page Newell & Co. (Boston et al.), protests 736007, etc., of Brangs & Heinrich (Boston), protest 688875–4416 of Oberle & Henry (New Orleans), and protests 664334, etc., of M. D. Knowlton Co. (Rochester). Opinions by Hay, G. A.

American Express Co. *v.* United States (4 Ct. Cust. Appls., 146; T. D. 33434) and United States *v.* Castle (5 Ct. Cust. Appls., —; T. D. 34554) followed as to wood pulp and paper held entitled to free entry.

TREASURY DEPARTMENT, *September 10, 1914.*

The appended decision of the United States Supreme Court is published for the information of customs officers and others concerned.

WM. P. MALBURN, *Assistant Secretary.*

(T. D. 34764.)

Jurisdiction.

STATE OF LOUISIANA *v.* MCADOO, SECRETARY OF THE TREASURY.[1]

United States Supreme Court. June 22, 1914.

IMMUNITY OF THE UNITED STATES FROM SUIT.

The United States may not be sued in the courts of this country without its consent. A suit against the Secretary of the Treasury to review his action in determining the rate of duty to be collected on foreign sugar is, in effect, a suit against the United States.

MOTION for leave to file petition.

[Denied.]

The facts which involve the jurisdiction of this court to entertain an original suit against the Secretary of the Treasury of the United States and the determination of whether the suit is one against the United States are stated in the opinion.

Ruffin G. Pleasant, Attorney General of the State of Louisiana (*Joseph W. Bailey* and *Paul J. Christian* on the brief), for the petitioner.

The Solicitor General (*Jesse C. Adkins*, Assistant Attorney General, on the brief) for the United States.

Mr. Justice LURTON delivered the opinion of the court:

The State of Louisiana has appeared at the bar of this court, through its attorney general, for the purpose of obtaining permission to file this petition against the Hon. William Gibbs McAdoo, Secretary of the Treasury of the United States, and the Hon. C. S. Hamlin, Assistant Secretary of the Treasury of the United States. The United States, by its Solicitor General, has appeared in opposition, contending that the suit is one against the United States and can not therefore be brought without its consent.

No principle is better established than that the United States may not be sued in the courts of this country without its consent. If, therefore, this be a suit against the United States, the State, though entitled as a State to appeal to the original jurisdiction of this court, must show some authority from Congress under which such a suit may be brought or leave to file must be denied. United States *v.* Clarke (8 Pet., 436); United States *v.* Lee (106 U. S., 196); Kansas *v.* United States (204 U. S., 331, 333).

That the United States is not named on the record as a party is true. But the question whether it is in legal effect a party to the controversy is not always determined by the fact that it is not named as a party on the record, but by the effect of the judgment or decree which can here be rendered. Minnesota *v.* Hitchcock (185 U. S., 373, 387); Kansas *v.* United States, *supra*.

The facts, briefly stated, upon which relief is asked are these:

The State, as a part of its economic policy, operates with its convicts three sugar plantations and three sugar mills. It is therefore a producer of sugar, which must find a market in competition with that imported from the Republic of Cuba and other sugar-exporting countries.

---

[1] Reported in 234 U. S., 627.

The petition avers that under the instructions of the defendant Treasury officials Cuban sugar, since March 1, 1914, the date upon which the Underwood Tariff Act became effective, is admitted into the United States at a rate of 1.01 cents per pound, being 80 per cent of 75 per cent of the rate of duty on sugar imposed by the Dingley Tariff Act of 1897, which was 1.685 cents per pound. The contention made is that the rate which should be collected on Cuban sugar is the rate imposed by the Dingley tariff bill, less a reduction of 20 per cent, making the net rate legally collectible 1.348 cents per pound, as provided in the commercial treaty between the United States and the Republic of Cuba of December 1, 1902, as made effective by the act of Congress of December 17, 1903 (33 Stat. L., p. 3), "*or, in the alternative, the duty on all such sugar imported into the United States should be seventy-five per centum of the Dingley bill rate, or one twenty-six one-hundredths cents per pound, as provided * * * in the Underwood bill of October third, nineteen hundred and thirteen, without any preferential rate whatever being allowed in favor of said Cuban sugar.*"

Article II of the convention referred to provides that the products of the soil or industry of Cuba not included in Article I "shall be admitted at a reduction of 20 per cent of the rate of duty as provided by the tariff act of the United States approved July 24, 1897, *or as may be provided by any tariff law of the United States subsequently approved.*" A proviso to Article VIII is in these words:

> That while this convention is in force no sugar imported from the Republic of Cuba, and being the product of the soil or industry of the Republic of Cuba, shall be admitted into the United States at a reduction of duty greater than twenty per centum of the rates of duty thereon as provided by the tariff act of the United States approved July 24, 1897, and no sugar, the product of any other foreign country, shall be admitted by treaty or convention into the United States, while this convention is in force, at a lower rate of duty than that provided by the tariff act of the United States approved July 24, 1897.

The reduction in all sugar duties made by the tariff act of 1913, effective March 1, 1914, is 25 per cent upon the former rate of the Dingley bill, and the same act after May 1, 1916, provides for the free admission of all sugar.

The contention seems to be that the proviso, that no sugar "shall be admitted into the United States at a reduction of duty greater than 20 per cent of the rate of duty provided by the Dingley Act, operates to prevent any reduction in favor of Cuban sugar after March 1, 1914, since the reduction made in duty on all imported sugar, including Cuban sugar, is 25 per cent of the Dingley rate, and that as such reduction is more than the preferential under the Cuban convention, the preferential duty under that convention ceases. Upon the other hand, the contention is that the Underwood Act manifested a plain purpose to continue a preferential of 20 per cent upon the reduced duties provided therein—a purpose manifested by the abrogation of the proviso of Article VIII, which might have interfered with such intent.

It is not the purpose of the court to intimate any opinion upon the merits of the contentions thus presented, and we have only stated the opposing views far enough to enable us to decide whether the suit is or is not one against the United States.

The petition proceeds by averring that the action of the defendant Treasury officials in instructing customs officers to admit Cuban sugar after March 1, 1914, at a reduction of 20 per cent of the rate effective on that date, was "arbitrary, illegal, and unjust * * * and will work great and irreparable injury to your petitioner unless they are restrained and inhibited from demanding and collecting the said illegal charges on Cuban sugar imported into the United States; and another, and higher duty, as shown above, be exacted and collected by said officials on said sugar instead." It is then contended that this direction to continue the allowance of a reduction of 20 per cent upon the reduced rates fixed by the Underwood Act is such a flagrant exercise of arbitrary power as to make it the duty of a court of equity, upon application of anyone having a definite and distinct interest, to prohibit the allowance of the reduction and require the collection of the full duty imposed by the Under-

wood Act, or, if any preferential be allowed, it be only upon the higher duty exacted by the act of 1897.

But what definite and distinct interest has the State of Louisiana whether the rate collected be too high or too low? She is a producer of sugar which must be sold in competition with foreign sugar, and the petition avers that the lowering of the duty upon Cuban sugar will lower the price for which she must sell her sugar yet unsold. But if Louisiana, as a mere producer and seller of sugar, may review the action of the Secretary of the Treasury in determining the rate to be collected on Cuban sugar, why may not any consumer, though not an importer, make a similar complaint if in his judgment the Secretary of the Treasury is exacting a higher rate than justified by the law, thereby enhancing the price he must pay in the market upon imported articles which he uses? Obviously, such suits to review the official action of the Secretary of the Treasury in the exercise of his judgment as to the rate which should be exacted under his construction of the tariff acts would operate to disturb the whole revenue system of the Government and affect the revenues which arise therefrom. Such suits would obviously, in effect, be suits against the United States. New York Guaranty Co. *v.* Steele (134 U. S., 230); Louisiana *v.* Jumel (107 U. S., 711); Hopkins *v.* Clemson College (221 U. S., 636, 642).

There have always been remedies by which an importer may recover an excess rate of duty exacted from him by a customs collector either by common-law action against the collector, as in Elliott *v.* Swartwout (10 Pet., 137), or by statute (sec. 2931, Rev. Stat.); act of January 10, 1890 (26 Stat. L., pp. 131, 137); act of August 5, 1909 (36 Stat. L., p. 11, ch. 6). But the claim that even an importer may complain by appeal or otherwise of the exaction of too low a rate of duty seems not to have been asserted until 1912, when an appeal by an importer against an assessment as too low was sustained by the Court of Customs Appeals (3 Ct. Cust. Appls., 24) upon the theory that one might be aggrieved by an assessment too low as well as by one too high. But this decision did not meet with favor, and the remedy by appeal was confined to cases in which the duty imposed was claimed to be higher than authorized by existing law. Act of October 3, 1913 (38 Stat. L., ch. 16, sec. 3, part N).

But we can discover no precedent where even an importer has sought to clog the wheels of government by reviewing the action of the Secretary of the Treasury by a bill such as this.

The duties imposed upon the Secretary of the Treasury in the collection of sugar tariffs are not ministerial. They are executive and involve the exercise of judgment and discretion. The facts show a situation in which the Secretary of the Treasury was confronted with the necessity of construing the law and then instructing the customs officers as to whether the 20 per cent preferential duty on Cuban sugar required by the convention and the act of 1903 confirming that treaty had been superseded or in any wise affected by the later provisions of the Underwood Act.

By statute originally enacted in 1792, now section 249, Revised Statutes, it is expressly provided that the Secretary of the Treasury is to "superintend the collection of customs duties as he shall think best." His interpretation of any custom law is made conclusive and binding upon all officers of customs and upon his successors until reversed by judicial decision. (Revised Statutes, sec. 2652; act of Mar. 3, 1875, 18 Stat. L., p. 469, ch. 136, sec. 2.) In the discharge of his duties, semijudicial in character, the Secretary of the Treasury is, by statute, entitled to the opinion of the Attorney General, which, as we may judicially know, was obtained in this matter. (Opinions of the Attorney General, Feb. 14, 1914, vol. 30, p. —.)

There is a class of cases which hold that if a public officer be required by law to do a particular thing, not involving the exercise of either judgment or discretion, he may be required to do that thing upon application of one having a distinct legal interest in the doing of the act. Such an act would be ministerial only. But if the matter in respect to which the action of the official is sought is one in which the exercise of either judgment or discretion is required, the courts will refuse to substitute their

judgment or discretion for that of the official intrusted by law with its execution. Interference in such a case would be to interfere with the ordinary functions of government. Marbury *v.* Madison (1 Cranch, 137), Kendall *v.* United States (12 Pet., 524, 610), and United States *v.* Schurz (102 U. S., 378) are examples of instances where the duty was supposed to be ministerial. Cases upon the other side of the line are Decatur *v.* Paulding (14 Pet., 497, 514, *et seq.*), Mississippi *v.* Johnson (4 Wall., 475), Cunningham *v.* Macon, etc., Railroad (109 U. S., 446), United States *ex rel.* Dunlop *v.* Black, Commissioner of Pensions (128 U. S., 40), United States *ex. rel. v.* Lamont (155 U. S., 303), Roberts *v.* United States (176 U. S., 221), Riverside Oil Co. *v.* Hitchcock (190 U. S., 316), and Ness *v.* Fisher (223 U. S., 683).

This application for leave to file must be denied.

The CHIEF JUSTICE took no part in the decision of this case.

Mr. Justice McKENNA concurs upon the ground last stated.

(T. D. 34765.)

Importation of neat cattle from New Zealand.

The prohibition in subsection 1, paragraph H, section 4, tariff act of October 3, 1913, suspended as to neat cattle from New Zealand. T. D. 23546 of February 27, 1902, amended accordingly.

TREASURY DEPARTMENT, *September 17, 1914.*

To officers of the customs and others concerned:

The Secretary of Agriculture states, in a communication dated the 11th instant, that New Zealand is so far free from contagious or infectious diseases that neat cattle may be imported from that country into the United States under the sanitary regulations prescribed by the Department of Agriculture without danger to the domestic animals of the United States.

The prohibition contained in subsection 1, paragraph H, section 4, tariff act of October 3, 1913, against the importation of neat cattle is, therefore, hereby suspended so far as the importation of such cattle from New Zealand (North and South Islands, including Stewart Island) is concerned, provided, however, that all importations of neat cattle from that country shall be made under the sanitary regulations prescribed by the Secretary of Agriculture therefor.

T. D. 23546 of February 27, 1902, is amended accordingly.

(56910.) WM. P. MALBURN, *Acting Secretary.*

(T. D. 34766.)

Common carrier.

Bond of the Northern Central Railway Co. for the transportation of dutiable merchandise discontinued. The transportation of dutiable merchandise over the Northern Central Railway may continue under the bond of the Pennsylvania Railroad Co., approved July 1, 1912 (T. D. 32684).

TREASURY DEPARTMENT, *September 16, 1914.*

SIR: The department is advised that the Northern Central Railway Co. has ceased active operations and will not hereafter be engaged

in the transportation of dutiable merchandise in bond, as all of its properties have been leased to and are now operated by the Pennsylvania Railroad Co.

The route covered by the bond of the Northern Central Railway Co., approved June 28, 1912 (T. D. 32671), is hereby discontinued, and you should note the fact and date of discontinuance upon the copy of the bond on file in your office, which should be retained without cancellation to meet any liability which may have accrued thereunder.

It is to be understood that the facilities heretofore used by the Northern Central Railway Co. in the transportation of dutiable merchandise may continue to be used under the bond of the Pennsylvania Railroad Co., approved July 1, 1912 (T. D. 32684), but, so far as the business of this department is concerned, the Northern Central Railway Co. has ceased to exist, and delivery of goods in bond for transportation in the cars and over the rails of the said company will be made through the accredited agents of the Pennsylvania Railroad Co. under its bond above referred to.

Respectfully, ANDREW J. PETERS,
(18554.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Baltimore, Md.*

(T. D. 34767.)

Common carrier.

Discontinuance of the bonded route of the Erie & Western Transportation Co. for the transportation of dutiable merchandise in bond and for the lading and unlading of bonded goods under the act of February 13, 1911.

TREASURY DEPARTMENT, *September 18, 1914.*

SIR: In view of the statements contained in your letter of the 12th instant, the discontinuance of the bonded route of the Erie & Western Transportation Co. for the transportation of dutiable merchandise in bond and for the lading and unlading of bonded goods under the act of February 13, 1911, covered by the bond of the said company, approved July 8, 1912, is authorized, and the fact and date of discontinuance should be noted on the copy of the bond on file in your office, which should be retained without cancellation to meet any liability which may have accrued thereunder.

Respectfully, BYRON R. NEWTON,
(65950.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Philadelphia, Pa.*

(T. D. 34768.)

Hedge shears.

Appeal directed from decision of the Board of United States General Appraisers of July 22, 1914, G. A. 7588 (T. D. 34665), involving the classification of hedge shears.

TREASURY DEPARTMENT, *September 18, 1914.*

SIR: I have to acknowledge the receipt of your letter of the 5th instant, inviting attention to the decision of the Board of United States General Appraisers of July 22, 1914, G. A. 7588 (T. D. 34665), wherein it is held that certain hedge shears which had been assessed with duty at the rate of 30 per cent ad valorem under paragraph 128 of the tariff act of October 3, 1913, were entitled to admission free of duty as agricultural implements under paragraph 391 of the said act.

In view of the importance of the issue, you are hereby requested to file, in the name of the Secretary of the Treasury, an appeal with the United States Court of Customs Appeals for a review of the board's decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, WM. P. MALBURN,
(95938.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 34769.)

Drawback on toilet preparations.

Drawback on the toilet preparation designated as "Kolynos Dental Cream," manufactured by the Kolynos Co., of New Haven, Conn., with the use of domestic tax-paid alcohol, imported thymol, and imported eucalyptus.—T. D. 30092 of November 4, 1909, and T. D. 31366 of March 9, 1911, revoked.

TREASURY DEPARTMENT, *September 18, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on a toilet preparation designated as "Kolynos Dental Cream," manufactured by the Kolynos Co., of New Haven, Conn., with the use of domestic tax-paid alcohol, imported thymol, and imported eucalyptus.

The allowance shall not exceed the quantities of domestic tax-paid alcohol and imported materials used in the manufacture of the exported dental cream, as shown by the sworn statement of the manufacturers, dated August 20, 1914, which is transmitted herewith for filing in your office.

From time to time, in the discretion of the collector, samples of the exported dental cream shall be taken and analyzed, and if, from

such analysis, the samples are found to contain materially less than 20 per cent of absolute alcohol, the fact shall be reported to the department.

Supplemental schedules showing the capacity of containers other than those specified in the sworn statement above referred to may be filed, and upon verification of such schedules drawback may be allowed on Kolynos Dental Cream when exported in the containers described therein.

T. D. 30092 of November 4, 1909, and T. D. 31366 of March 9, 1911, are hereby revoked.

Respectfully, WM. P. MALBURN,
(67918.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34770.)

Drawback on box straps.

T. D. 34733 of August 28, 1914, extended to cover embossed box straps manufactured by the De Haven Manufacturing Co., of New York, N. Y., from imported hoop steel.

TREASURY DEPARTMENT, *September 19, 1914.*

SIR: The department's regulations of August 28, 1914 (T. D. 34733), providing for the payment of drawback on embossed box straps manufactured by the De Haven Manufacturing Co., of New York, N. Y., from imported hoop steel are hereby extended to cover cut lengths of embossed box straps manufactured by the said company from imported hoop steel.

The sworn statement of the manufacturers, dated August 18, 1914, now on file in your office, may be referred to in the liquidation of the entry under these regulations.

Respectfully, WM. P. MALBURN,
(7010.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34771.)

Common carrier.

Approving bond of the San Diego & Arizona Railway Co. as a common carrier for the transportation of dutiable merchandise and for the lading and unlading of bonded goods under the act of February 13, 1911.

TREASURY DEPARTMENT, *September 19, 1914.*

SIR: The department has received your letter of the 10th instant, with which was inclosed a bond, in duplicate, of the San Diego &

Arizona Railway Co. as a common carrier for the transportation of dutiable merchandise in bond and for the lading and unlading of bonded goods under the act of February 13, 1911.

The bond is approved and one copy thereof is herewith inclosed to be placed upon the files of your office.

Respectfully, WM. P. MALBURN,
(102856.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Los Angeles, Cal.*

(T. D. 34772.)

Drawback on cans and attachments.

T. D. 34448 of May 8, 1914, extended to cover oil cans and attachments manufactured by the Tidewater Oil Co., of New York, N. Y., with the use of imported tinplate.

TREASURY DEPARTMENT, *September 21, 1914.*

SIR: The department's regulations of May 8, 1914 (T. D. 34448), providing for the payment of drawback on oil cans and attachments manufactured with the use of imported tinplate are hereby extended to cover 1 and 5 gallon cans, screw caps, tin handles, Anderson faucets, angus faucets, flat caps, low screw caps, high tin handles, tin disks, and ring blanks manufactured by the Tidewater Oil Co., of New York, N. Y., with the use of imported tinplate.

The sworn statement of the manufacturers, dated August 26, 1914, is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(101610.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34773.)

Drawback on corsets.

Drawback on corsets manufactured by the Corset H. Co., of Worcester, Mass., with the use of various imported materials.

TREASURY DEPARTMENT, *September 21, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on corsets manufactured by the Corset H. Co., of Worcester, Mass., with the use of imported coutils, laces, brooches, batistes, sateens, embroideries, and other materials of like kind.

A manufacturing record shall be kept, which will show, in addition to the usual data, the lot number and date of manufacture of each lot of corsets manufactured for exportation with benefit of drawback, the quantity and value of imported material of each kind used in the manufacture thereof, the number of corsets of each size and style produced, the quantity of imported material of each kind appearing therein, and the quantity and value of the waste incurred. A sworn abstract from such manufacturing record shall be filed with each drawback entry.

The allowance shall not exceed the quantities of imported materials used in the manufacture of the corsets exported, as shown by the abstract from the manufacturing record, the allowance to be reduced according to the quantity of imported materials which the value of the waste will replace.

The sworn statement of the manufacturers, dated August 29, 1914, is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(100111.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 34774.)

Abstracts of decisions of Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, Somerville, and Hay.

BEFORE BOARD 1, SEPTEMBER 14, 1914.

No. 36488.—LAVA STONE.—Protest 659748 of T. D. Downing & Co. (New York). Opinion by McClelland, G. A.

Protest overruled on the authority of G. A. 7543 (T. D. 34278) relating to lava stone.

No. 36489.—IMITATION PEARL BEAD NECKLACES.—Protest 679162 of American Express Co. (Boston).

SULLIVAN, *General Appraiser:* The testimony in this case shows that the merchandise is unfinished necklaces of imitation pearl beads strung without clasps on soft double threads, described by the witness as "a sort of double thread; it is almost like floss." It is also shown that the beads on these strings are assorted and graduated in size, being larger in the middle of the string and tapering toward each end; that they are restrung on dental floss, and clasps attached after arrival in this country; that they are imported in that manner "so as to designate the right number of beads to the right necklace;" and that when restrung the relative position of the beads is not disturbed, nothing being done except to put a new string in and attach a clasp.

This merchandise was assessed under paragraph 421, act of 1909, at 60 per cent ad valorem as beaded articles, and while there are many claims in the protest, the one

relied upon by the protestants appears to be that it is dutiable at 35 per cent ad valorem as beads under the first part of the same paragraph, which reads as follows:

421. Beads and spangles of all kinds, including imitation pearl beads, not threaded or strung, or *strung loosely* on thread *for facility in transportation only*, thirty-five per centum ad valorem. [The italics are ours.]

It will be observed that these beads are temporarily strung, but there is no evidence that they are "strung loosely on thread for facility in transportation only." On the contrary, the witness clearly states that they are so strung "so as to designate the right number of beads to the right necklace." The articles are plainly unfinished necklaces, and, as necklaces are commonly or commercially known as jewelry (Cohn *v.* United States, 4 Ct. Cust. Appls., 378; T. D. 33536), are properly dutiable at 60 per cent ad valorem under the last part of paragraph 448 of said act providing for "all articles commonly or commercially known as jewelry, or parts thereof, finished or *unfinished*"; but in view of the fact that the collector has assessed them with duty at the same rate, his classification of this merchandise as beaded articles at 60 per cent ad valorem under paragraph 421, although erroneous, will not be disturbed.

The protest is overruled.

No. 36490.—Imitation Pearls on Wire.—Protests 689051, etc., of F. Wm. Gertzen Co. (New York). Opinion by Sullivan, G. A.

Imitation pearls on wire, classified under paragraphs 199 and 109, tariff act of 1909, were held dutiable as imitation precious stones (par. 449). G. A. 7155 (T. D. 31234) followed. Protests sustained in part.

No. 36491.—Imitation Precious Stones.—Protests 637670–42251, etc., of T. Buettner & Co. et al. (Chicago). Opinion by Sullivan, G. A.

Imitation diamonds, rubies, and other precious stones, pierced, were held properly classified under paragraph 109, tariff act of 1909. Abstract 35260 (T. D. 34321) followed.

No. 36492.—Jewelry—Imitation Jet—Real Jet.—Protests 563138–39201, etc., of Marshall Field & Co. (Chicago). Opinion by Sullivan, G. A.

On the authority of Abstract 35375 (T. D. 34398), jewelry composed of plated brass set with real jet was held properly classified under the latter part of paragraph 448, tariff act of 1909. United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506) followed as to imitation jet articles. Protests sustained in part.

No. 36493.—Protests Overruled.—Protests 621091–41565, etc., of G. W. Sheldon & Co. et al. (Chicago), and protests 694481, etc., of F. Wm. Gertzen Co. et al. (New York). Opinions by Sullivan, G. A.

Protests unsupported; overruled.

No. 36494.—Fish in Tins.—Protests 722192–45139, etc., of the Swedish Produce Co. et al. (Chicago). Opinion by Brown, G. A.

United States *v.* Miller (5 Ct. Cust. Appls., —; T. D. 34443) followed as to fish in tins. Protests sustained in part.

Before Board 2, September 14, 1914.

No. 36495.—Pile Fabrics—Astrachans.—Protest 663547 of Knauth, Nachod & Kuhne (New York).

Cooper, *General Appraiser:* The merchandise in question consists of imitation mohair astrachans composed of cotton and jute. Classification was made by the collector as uncut pile fabrics and duty was taken at the rate of 47½ per cent ad valorem under paragraph 325 of the act of 1909. The importers rely upon the claim that the

merchandise is dutiable as manufactures of jute at 45 per cent ad valorem under paragraph 358, or as manufactures of cotton at the same rate under paragraph 332 of said act.

The testimony shows that the merchandise is woven on a loom in which loops of thread are formed on the surface of the fabric over wires, and that it is of the same construction and manufactured in the same manner as pile fabrics having cut pile threads, with the exception that the process of cutting the piles has not been performed. There is also some testimony to the effect that such merchandise is commercially known as a pile fabric.

Counsel for the importers in his brief cites the case of *In re* Herrman (56 Fed., 477) as authority for his contention. In that case it was held that astrachans were not of the class of goods commercially known by the generic name of "pile fabrics" at the time of the enactment of the tariff act of 1890. That decision, however, is not an authority in this case, for the reason that Congress inserted in the corresponding provisions of subsequent tariff acts the words "cut or uncut," which makes it clear that the intention was to include in the term "pile fabrics" materials which have uncut as well as cut piles. In a subsequent decision by the United States Circuit Court for the Southern District of New York, Judge Lacombe held that certain astrachan trimmings were pile fabrics. (*In re* Downing, et al., 56 Fed., 815.)

Furthermore, under the ruling in United States *v.* Sheldon (5 Ct. Cust. Appls., —; T. D. 34555), we are not at liberty to presume that commercial designation continues after having been once established and acted upon by the courts. In that case the court said:

> We have, therefore, for review a judgment declaring that an article not jelly in fact is nevertheless commercially known as jelly, with no proof of such commercial designation except such as was within the cognizance of the Board of General Appraisers in another case or cases, the record of which is not before us for consideration.

This brings the case within the ruling of United States *v.* Oberle (1 Ct. Cust. Appls., 527; T. D. 31545) in which we held that—

> It seems unnecessary to say where a decision is rested upon a record or records in which the crucial point in the issue is one of commercial designation or any other probative fact, and these records are not a part of the record before this court, there is not before the court sufficient testimony to sustain the finding of the board.

On the record we find that the merchandise is a pile fabric having uncut piles, and we hold that it is properly dutiable at the rate returned by the collector.

The protest is overruled.

No. 36496.—Pile Fabrics—Cotton Dress Goods.—Protest 708835 of Faber & Hein (New York). Opinion by Cooper, G. A.

Dress goods composed of colored and bleached cotton cloth with a cut pile covering part of the surface, classified as a pile fabric under paragraph 325, tariff act of 1909, was claimed dutiable as countable cotton cloth. Protest overruled. G. A. 7572 (T. D. 34545) followed.

No. 36497.—Union Glass Cloth—Protest 610437 of Felix Tausend (New York). Opinion by Cooper, G. A.

Glass cloth classified as manufactures of cotton under paragraph 332, tariff act of 1909, was claimed dutiable as flax chief value (par. 357). Protest overruled.

No. 36498.—Weight of Flax Fabrics.—Protest 653643 of the Belfast Linen Handkerchief Company (Ltd.) (New York). Opinion by Cooper, G. A.

Protest sustained claiming that certain flax fabrics, dutiable under paragraph 357, tariff act of 1909, weighed less than 4½ ounces per yard and contained between 60 and 120 threads per square inch.

No. 36499.—APPLIQUÉD ARTICLES.—Protest 693898 of B. Altman & Co. (New York). Opinion by Cooper, G. A.

Paper files, writing pads, book cases, and other articles composed in chief value of cotton appliquéd with metal threads, classified under the last provision of paragraph 179, tariff act of 1909, were claimed dutiable as appliquéd articles (par. 349). Protest overruled on the authority of Altman *v.* United States (5 Ct. Cust. Appls., —; T. D. 34251).

No. 36500.—APPLIQUÉD WEARING APPAREL.—Protests 740451-50046, etc., of David Bigelow et al. (Chicago). Opinion by Cooper, G. A.

Ladies' silk wearing apparel, embroidered, in part of lace and appliquéd, and appliquéd wearing apparel in chief value of wool, classified under paragraph 358, tariff act of 1913, was claimed dutiable as silk wearing apparel (par. 317) and wearing apparel in part of wool (par. 291). Paragraph 358 was held more specific. Goldenberg *v.* United States (130 Fed., 108; T. D. 25220) cited. Protests overruled.

No. 36501.—STRAW SLIPPERS.—Protests 730024, etc., of J. J. Gavin & Co. (New York). Opinion by Cooper, G. A.

Slippers composed of straw, lined with cotton terry cloth, classified as cotton wearing apparel under paragraph 324, tariff act of 1909, and paragraph 256, tariff act of 1913, were held dutiable as manufactures of straw (par. 463, tariff act of 1909, and par. 368, tariff act of 1913). Abstract 34599 (T. D. 34127) followed.

No. 36502.—BROKEN FLAX STRAW.—Protests 713736, etc., of G. Stratford Oakum Co. et al. (New York et al.). Opinion by Cooper, G. A.

On the authority of G. A. 7395 (T. D. 32857) and G. A. 7545 (T. D. 34304) broken flax straw, classified as tow of flax under paragraph 336, tariff act of 1909, was held dutiable as flax straw (par. 333) as claimed.

No. 36503.—COLORED COTTON CLOTH.—Protest 723621 of Frank & Lambert (New York). Opinion by Cooper, G. A.

Protest overruled claiming that certain cotton cloth was not colored, as classified under paragraph 315, tariff act of 1909.

No. 36504.—ISTLE.—Protest 733028 of John L. Friedman (Laredo). Opinion by Cooper, G. A.

Certain istle, classified as dressed, dyed, or combed, under paragraph 285, tariff act of 1913, was held entitled to free entry as not dressed or manufactured (par. 497).

No. 36505.—PROTESTS OVERRULED.—Protests 737537, etc., of Smith & Dove Manufacturing Co. et al. (Boston), and protests 733437, etc., of David Harris et al. (New York). Opinions by Cooper, G. A.

Protests unsupported; overruled.

No. 36506.—PROTESTS ABANDONED.—Protests 12462h, etc., of J. Donat & Co. et al. (New York).

Protests abandoned.

BEFORE BOARD 3, SEPTEMBER 14, 1914.

No. 36507.—WEIGHT OF MUSHROOMS.—Protest 733481 of E. H. Bailey & Co. (Philadelphia). Opinion by Waite, G. A.

Protest overruled claiming that an allowance should be made for the weight of the water or the weight of the tins containing mushrooms.

No. 36508.—ARTISTIC ANTIQUITIES.—Protest 735075 of American Express Co. (Boston) and protest 739741 of Ignatius Pollak (Mobile). Opinion by Waite, G. A.

The Treasury regulations not having been complied with, protests overruled claiming free entry for artistic antiquities.

No. 36509.—DURESS.—Protests 647906, etc., of F. H. Shallus (Baltimore). Opinion by Waite, G. A.

Protests overruled claiming certain entries were made under duress. Van Ingen *v.* United States (4 Ct. Cust. Appls., 320; T. D. 33520) and Colonial Export & Import Co. *v.* United States (5 Ct. Cust. Appls., —; T. D. 34190) noted.

No. 36510.—SCULPTURES.—Protests 693634 and 701472 of C. H. Wyman & Co. (St. Louis). Opinions by Waite, G. A.

Marble and bronze vases and lamps, classified under paragraph 112, tariff act of 1909, and a cast bronze figure made from molds by machinery, classified under paragraph 199, were claimed dutiable as sculptures (par. 470). Protests overruled.

No. 36511.—ARTISTIC ANTIQUITIES.—Protest 713461 of William A. Bird (Buffalo). Opinion by Waite, G. A.

Protest overruled claiming that a certain bedspread was over 100 years old and entitled to free entry under paragraph 717, tariff act of 1909.

No. 36512.—DAMAGED SUGAR—SAMPLING.—Protest 695845-4428 of the American Sugar Refining Co. (New Orleans).

SOMERVILLE, *General Appraiser:* The importation consists of a cargo of sugar in bags, a portion of which—some 574 bags—were partially wet or otherwise damaged. The contention of the importers is that in testing a portion of this damaged sugar (according to the testimony 100 to 200 bags) the Government, in taking samples of the sugar for the purpose of assessing duty, failed to comply with the Treasury regulations in their method so as to fairly represent the condition of the sugar as a whole, and that as a result duty was erroneously assessed on the damaged sugar on the basis of a polariscopic test of 95.16357 degrees instead of 93.544 degrees, as arrived at by the protestants' own chemists on test of samples drawn by their own samplers, which samples are claimed to more accurately represent the true condition of the sugar.

The sugar arrived October 5, 1912, and the sampling was done on October 16, 1912. The report of the local appraiser, under date of January 9, 1913, so far as pertinent, reads as follows:

> I have to state that the regulations were strictly complied with in the sampling and testing of the sugar in question, and in this case special care was taken to secure sufficient and equitable samples under the personal supervision of the sampler in charge, full instructions having previously been given by the sugar examiner as to the manner in which the sampling should be done.

The sole question for the board to pass on in this case is whether the Government samplers properly sampled the damaged sugar in question so as to secure fair representative samples of the merchandise for dutiable purposes. The testimony on this point is diametrically in conflict. * * *

Where the material facts are so positively asserted by the witnesses for the protestants, and are with equal positiveness denied or contradicted by the witnesses for the Government, as in this case, it can hardly be said that the protestants have, by any fair preponderance of evidence, overcome the presumption of correctness attending the action of Government officers in the performance of their duties. Note *In re* Yarnell, G. A. 3282 (T. D. 16637).

That one side or the other is in gross error in regard to the question of a complaint is self-evident. The witnesses for the Government may be regarded as disinterested, and certainly there is nothing in the testimony or record to show that they had any

motive or interest in willfully testifying falsely any more than did the witnesses for the importers.

We are constrained to overrule the protest and affirm the decision of the collector.

No. 36513.—Coverings of Liquids and Semiliquids.—Protests 370970, etc., of Wo On & Co. et al. (New York). Opinion by Somerville, G. A.

United States *v.* Peabody (3 Ct. Cust. Appls., 130; T. D. 32383) followed as to coverings of liquids and semiliquids.

No. 36514.—Capacity of Barrels of Stout.—Protests 703632, etc., of F. L. Roberts & Co. et al. (Boston). Opinion by Somerville, G. A.

On the authority of United States *v.* Cummings (3 Ct. Cust. Appls., 291; T. D. 32576) protests sustained claiming that duty was assessed upon an excessive quantity of stout in barrels.

No. 36515.—Scrap Tin Waste—Sufficiency of Protest.—Protest 713240 of the Republic Chemical Co. (Pittsburgh). Opinion by Somerville, G. A.

Scrap tin classified as waste under paragraph 479, tariff act of 1909, was claimed to be free of duty without citing any paragraph. Protest overruled for want of definiteness.

No. 36516.—Gauge of Stout.—Protest 720804-4608 of F. Hollander & Co. (New Orleans). Opinion by Somerville, G. A.

Protest overruled as to gauge of ale and stout in bottles.

No. 36517.—Shortage of Bottles of Whisky.—Protests 721866-4606, etc., of Geo. Wm. Rueff (New Orleans). Opinion by Somerville, G. A.

Protests overruled claiming an allowance in duty for shortage of bottles of whisky. United States *v.* Vignier (3 Ct. Cust. Appls., 120; T. D. 32380) cited.

No. 36518.—Gold and Silver Sweepings.—Protest 725181-45332 of International Forwarding Co. (Chicago). Opinion by Somerville, G. A.

On the authority of United States *v.* Henderson (5 Ct. Cust. Appls., —; T. D. 34097), sweepings of gold and silver, classified as waste under paragraph 479, tariff act of 1909, were held entitled to free entry under paragraph 643.

No. 36519.—Old Gunny Bagging.—Protests 701829-4533 and 713909-4575, etc., of Mente & Co. (New Orleans), and protest 732428 of F. B. Vandegrift & Co. (New York). Opinions by Somerville, G. A.

Protests overruled as to old gunny bagging classified as waste under paragraph 479, tariff act of 1909. G. A. 6603 (T. D. 28202) and G. A. 7194 (T. D. 31447) cited.

No. 36520.—Old Gunny Bagging—Rags.—Protests 728068, etc., of Castle, Gottheil & Overton et al. (New York). Opinion by Somerville, G. A.

Certain old gunny bagging was held entitled to free entry as rags under paragraph 660, tariff act of 1909. G. A. 6603 (T. D. 28202) followed. Protests sustained in part.

No. 36521.—Protests Overruled.—Protests 736013, etc., of Mauger & Avery et al. (Boston), protest 729220 of C. J. Tower (Buffalo), protest 727092 of B. R. Lawrence (Detroit), protest 732548-4740 of G. W. Rueff (New Orleans), protests 731266, etc., of Arbuckle Bros., protests 728888, etc., of Bolte & Bos et al., protest 731664 of Holtz & Freystedt Co., and protest 732407 of Hudson Distributing Co. (New York), protests 480533, etc., of N. C. Ives (Philadelphia), protests 732782, etc., of Worumbo Manufacturing Co. (Portland, Me.), protests 683859, etc., of Quong Hong Hai & Co. et al. (San Francisco), and protest 732550 of W. Q. Hughes (Savannah). Opinions by Somerville, G. A.

Protests unsupported; overruled.

No. 36522.—VALUE.—Protest 710791-4552 of Mente & Co. (New Orleans). Opinion by Somerville, G. A.

Protest raising a question of value dismissed.

No. 36523.—PROTESTS DISMISSED.—Protest 728847 of Geo. E. Van Vorst (New York). Opinion by Somerville, G. A.

Protest dismissed upon stipulation of counsel.

No. 36524.—PROTESTS OVERRULED.—Protest 722536-4621 of Oberle & Henry (New Orleans). Opinion by Hay, G. A.

Protest unsupported; overruled.

BEFORE BOARD 1, SEPTEMBER 17, 1914.

No. 36525.—EMBROIDERED LEATHER GLOVES.—Protests 85221f, etc., of H. Chanut (New York). Opinion by McClelland, G. A.

Certain leather gloves were held not subject to cumulative duty under paragraph 445, tariff act of 1897. Wertheimer *v.* United States (4 Ct. Cust. Appls., 338; T. D. 33528) followed.

No. 36526.—GRASS IMITATION AIGRETTES.—Protests 725599-45251, etc., of Theo. Ascher Co. (Chicago). Opinion by McClelland, G. A.

Imitation aigrettes made of grass were held properly classified under paragraph 438 of the tariff act of 1909. G. A. 7140 (T. D. 31144) followed.

No. 36527.—METAL POTS CONTAINING ARTIFICIAL FLOWERS.—Protest 681736 of Stern Bros. (New York). Opinion by McClelland, G. A.

Metal pots containing artificial flowers composed in chief value of metal were held dutiable under the provision for artificial flowers of whatever material composed in paragraph 438, tariff act of 1909, as classified. Abstract 25350 (T. D. 31524), Abstract 31915 (T. D. 33338), Abstract 33994 (T. D. 33848), Goodman *v.* United States (2 Ct. Cust. Appls., 112; T. D. 31658), and Tuska *v.* United States (2 Ct. Cust. Appls., 325; T. D. 32053) cited.

No. 36528.—PROTESTS DISMISSED.—Protests 748492, etc., of Seabury & Johnson et al. (New York). Opinion by McClelland, G. A.

Protests dismissed upon stipulation of counsel.

No. 36529.—PROTESTS OVERRULED.—Protests 612824-41507, etc., of the International Forwarding Co. (Chicago), protest 386539 of the Cleveland Optical Co. (Cleveland), and protests 470035, etc., of the American Bead Co. et al., and protest 533571 of the American Thermo-Ware Co. (New York). Opinions by Sullivan, G. A.

Protests unsupported; overruled.

No. 36530.—FISH ROE, PRESERVED.—Protest 448510 of Moos & Co. (New York). Opinion by Brown, G. A.

Merchandise classified as fish roe, preserved, under paragraph 270, tariff act of 1909, was claimed free of duty as fish eggs (par. 560). Protest overruled.

No. 36531.—FISH IN TINS.—Protests 735429, etc., of G. Luzzatto et al. and protest 711446 of L. Meyer Trading Co. (New York), and protests 611334, etc., of J. W. Hampton, jr., & Co. et al. (New York et al.). Opinions by Brown, G. A.

Herrings in tins were held dutiable under paragraph 272, tariff act of 1909, as claimed. Protests overruled as to fish in oil classified under paragraph 270.

No. 36532.—PROTESTS ABANDONED.—Protests 405659, etc., of Wakem & McLaughlin et al. (New York).

Protests abandoned.

BEFORE BOARD 2, SEPTEMBER 17, 1914.

No. 36533.—STEEL STRIPS—POLISHED STEEL.—Protests 678996, etc., of Hermann Boker & Co. (New York).

FISCHER, *General Appraiser:* The disputed merchandise, consisting of flat steel in strips, was returned as polished steel, and additional duty at the rate of four-tenths of 1 cent per pound was levied thereon under the following provision in paragraph 137, tariff act of 1909:

On all strips, plates, or sheets of iron or steel of whatever shape, other than the polished, planished, or glanced sheet iron or sheet steel hereinbefore provided for, which are cold hammered, blued, brightened, tempered, or polished by any process to such perfected surface finish or polish better than the grade of cold rolled, smoothed only, hereinbefore provided for, there shall be paid four-tenths of one cent per pound in addition to the rates provided in this section upon plates, strips, or sheets of iron or steel of common or black finish of corresponding gauge or value.

The importers claim said articles are not polished and therefore not properly subject to any additional duty.

We have, then, this sole question to determine: Have the imported articles been subjected to any polishing process?

Considerable testimony was submitted by both parties to this controversy in support of their respective contentions. The proof offered shows that, when the steel in question is finished in the rolls and coiled ready for shipment, dirt, rust, grease, etc., adhere to the surface thereof; that in order to make the merchandise more presentable, as well as to preserve it while in transit, this foreign matter is removed with an emery cloth. There is no attempt at polishing, nor is it desirable to produce a polished surface. Indeed, the very use to which this steel is employed would seem to make polishing a needless economic waste.

This method of cleaning embraces only the outside or visible portion at the end of each coil and does not extend to the inside coiled strip. Therefore, it can hardly be deemed to be a polishing process; certainly not as contemplated by Congress in enacting said paragraph 137.

In Crucible Steel Co. *v.* United States (132 Fed., 269; T. D. 25367, and 137 Fed., 384; T. D. 26157), as well as in United States *v.* Crucible Steel Co. (147 Fed., 537; T. D. 27446, and 154 Fed., 1005; T. D. 28106), the Circuit Court and the Circuit Court of Appeals held that steel similarly produced was not brightened within the meaning of the law.

The protests are sustained and the decisions of the collector reversed. * * *

No. 36534.—BRONZE WIRE CLOTH.—Protest 715605 of Castle, Gottheil & Overton (Philadelphia). Opinion by Fischer, G. A.

United States *v.* McCoy (4 Ct. Cust. Appls., 396; T. D. 33838) followed as to bronze wire cloth.

No. 36535.—PARTS OF BALL BEARINGS.—Protest 730469 of Norma Company of America (New York). Opinion by Fischer, G. A.

Articles used as raceways for ball bearings, consisting of grooved steel rings, were held properly classified as parts of ball bearings under paragraph 106, tariff act of 1913, rather than dutiable as manufactures of metal under paragraph 167.

No. 86536.—Crucible Steel.—Protests 740427, etc., of Willard B. Jackson (Boston). Opinion by Fischer, G. A.

Merchandise classified as steel made by the crucible process under paragraph 110, tariff act of 1913, was claimed dutiable as "strips of iron or steel not specially provided for" (par. 105). Protests overruled.

No. 86537.—Old Cotton Tie Buckles.—Protest 735779–4761 of Mente & Co. (New Orleans). Opinion by Fischer, G. A.

G. A. 2848 (T. D. 15667) followed as to old cotton tie buckles classified as metal articles under paragraph 167, tariff act of 1913, and claimed entitled to free entry under the provision for "ties * * * with or without buckles * * * for baling cotton" (par. 509).

No. 86538.—Unfinished Scissors.—Protests 731412, etc., of International Cutlery Co. (Cleveland). Opinion by Fischer, G. A.

Merchandise classified as unfinished scissors under paragraph 128, tariff act of 1913, were claimed dutiable as forgings (par. 106). Protests overruled. G. A. 7573 (T. D. 34546) noted.

No. 86539.—Seals Lithographically Printed—Labels.—Protests 721083, etc., of R. Tuck & Sons Co. (New York). Opinion by Fischer, G. A.

Merchandise classified as labels lithographically printed, embossed and die cut, at 30 cents a pound, were held dutiable at 20 cents per pound under paragraph 412, tariff act of 1909, as claimed. Abstract 35413 (T. D. 34416) followed. Protests sustained in part.

No. 86540.—Appliquéd Wearing Apparel.—Protests 688551, etc., of Hamburger, Levine Co. et al. (New York). Opinion by Cooper, G. A.

United States *v.* Hamburger (5 Ct. Cust. Appls., —; T. D. 34382) followed as to merchandise classified as appliquéd wearing apparel under paragraph 349, tariff act of 1909, and held dutiable as cotton wearing apparel (par. 324).

Before Board 3, September 17, 1914.

No. 86541.—Protests Overruled.—Protest 741779 of Valentine Hat Co. (Kansas City). Opinion by Waite, G. A.

Protest unsupported; overruled.

No. 86542.—Rockingham Ware—Stipulation.—Protest 731630 of J. W. Hampton, jr., & Co. (Philadelphia).

Hay, *General Appraiser:* This protest was submitted upon the following stipulation between the Assistant Attorney General and counsel for the importers.

It is hereby agreed that all the merchandise contained in packages marked 34 (22) BM. 14, 18, 19, 20, and 21 on the first page of invoice of Joseph Poole & Co., is properly represented by the sample marked by Ex. 1, and accompanying this stipulation, and that said sample has been duly identified by the examiner of Rockingham ware at New York as correct, and it is agreed, after conference with the said examiner, that he would, if called, testify that like goods would have been and were passed at New York during the tariff act of 1909 as Rockingham ware, dutiable at 40 per cent ad valorem.

The merchandise was classified under paragraph 93 of the tariff act of 1909, and is claimed to be dutiable under paragraph 92 thereof.

The peculiar wording of this stipulation leaves us without facts upon which to decide the case. It is not made definite by it that the examiner states the merchandise in question is Rockingham ware. The functions of this board are to determine the classification of merchandise from the testimony before it. To accept the opinion

of an examiner from whose action in many cases appeals are taken to this board, would be the complete abnegation of its functions. The protest is therefore overruled without affirming the action of the collector.

No. 36543.—JEWELRY.—Protest 731190 of A. Steinhardt & Bro. (New York). Opinion by Hay, G. A.

Cohn *v.* United States (4 Ct. Cust. Appls., 378; T. D. 33536) followed as to lavallieres, brooches, and pins, commonly or commercially known as jewelry, held dutiable under paragraph 448, tariff act of 1909.

No. 36544.—RELIQUIDATION—FRAUD.—Protests 610720, etc., of Zucca & Co. et al. (New York). Opinion by Hay, G. A.

Abstract 36340 (T. D. 34742) followed as to reliquidation.

No. 36545.—JUTE WASTE.—Protests 731981, etc., of Espy Cotton Co. (Savannah), Opinion by Hay, G. A.

Old jute bagging classified as waste under paragraph 384, tariff act of 1913, was held free of duty as waste gunny cloth (par. 408).

No. 36546.—FITTED LEATHER CASES.—Protests 622870, etc., of Bayer & Pretzfelder Co. et al., and protests 613290, etc., of Mark Cross Co. et al. (New York). Opinions by Hay, G. A.

Protests sustained in part as to fitted leather cases classified under paragraph 452, tariff act of 1909. United States *v.* Ovington (2 Ct. Cust. Appls., 393; T. D. 32163), and United States *v.* Cross (4 Ct. Cust. Appls., 274; T. D. 33489) followed.

No. 36547.—PROTESTS OVERRULED.—Protests 696346–4421, etc., of Geo. Wm. Rueff et al. (New Orleans et al.), and protests 597109, etc., of Albrecht & Meister et al., and protests 631159, etc., of Thomas Nevin et al. (New York). Opinions by Hay, G. A.

Protests unsupported; overruled.

(T. D. 34775.)

Drawback on bookcases.

Drawback on sectional bookcases manufactured by the Gunn Furniture Co., of Grand Rapids, Mich., with the use of imported window glass.

TREASURY DEPARTMENT, *September 22, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on sectional bookcases manufactured by the Gunn Furniture Co., of Grand Rapids, Mich., with the use of imported window glass.

The allowance shall not exceed the quantity of imported window glass appearing in the exported sectional bookcases, as shown by the sworn schedule of the manufacturers, dated July 18, 1914, which is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(6200.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Detroit, Mich.*

(T. D. 34776.)

Drawback on automobiles.

Drawback on automobiles manufactured by the Studebaker Corporation, Detroit, Mich., with the use of imported materials and parts, and with the use of parts manufactured with the use of imported materials.—T. D. 33828 of November 1, 1913, T. D. 33984 of November 19, 1913, and T. D. 33950 of December 5, 1913, revoked.

TREASURY DEPARTMENT, *September 24, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the general drawback regulations (T. D. 31695 of June 16, 1911), on automobiles and automobile parts manufactured by the Studebaker Corporation, of Detroit, Mich., in whole or in part with the use of imported materials and parts and with the use of parts produced by domestic manufacturers in whole or in part from imported materials and covered by drawback rates now existing or which shall be promulgated in the future, under the conditions set forth in the sworn statements of the said corporation, dated, respectively, August 12 and 18, 1914, transmitted herewith, and the sworn statements filed by the domestic manufacturers in connection with drawback rates separately established.

The allowances shall not exceed the quantities of imported materials used in the manufacture of the exported automobiles or parts, as shown by the aforesaid sworn statements of the Studebaker Corporation, or provided for by drawback rates separately established covering parts supplied to the Studebaker Corporation, said allowances to be reduced by the quantity of imported materials which the value of wastes will replace.

Supplementary sworn statements and schedules may be filed, modifying the originals or showing the use of other imported parts, materials, or parts made from imported materials, new models of automobiles or parts manufactured for exportation, changes in quantities or values of imported materials or parts, or of wastes incurred, etc. Such supplementary statements and schedules shall be referred to the special agents for verification, and their reports, together with the statements and schedules, submitted to the department for approval prior to liquidation of entries referring thereto.

T. D. 33828 of November 1, 1913, T. D. 33894 of November 19, 1913, and T. D. 33950 of December 5, 1913, and all other Treasury decisions providing for drawback on automobiles and parts manufactured by the Studebaker Corporation are hereby revoked.

Respectfully, ANDREW J. PETERS,
(98963.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Detroit, Mich.*

(T. D. 34777.)

Neutrality.

Instructions supplementing those in T. D. 34718 of August 20, 1914, relative to the observance of neutrality in radio communication.

TREASURY DEPARTMENT, *September 25, 1914.*

To collectors of customs (all sea and lake ports):

Attention is invited to T. D. 34718 of August 20, 1914, paragraph 4, relative to radio communication involving neutrality, and also to the act approved July 23, 1912 (37 Stat., pt. 1, 199), section 1 of which provides that, with certain limitations as to size, etc., no steamer shall leave any port of the United States unless equipped with an efficient radio apparatus in good working order.

In accordance with an opinion of the Secretary of the Navy, expressed in this connection, collectors of customs should, when sealing a vessel's radio apparatus, inform the master that the seal must not be broken until he has cleared the port, and that upon obtaining his clearance papers he should make application for a written permit to break the seal after departure from the port.

(102574.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 34778.)

Common carrier.

Approving bond of the Luckenbach Steamship Co. (Inc.) as a common carrier for the transportation of dutiable merchandise and for the lading and unlading of bonded goods under the act of February 13, 1911.

TREASURY DEPARTMENT, *September 26, 1914.*

SIR: The bond, in duplicate, transmitted with your letter of the 23d instant, of the Luckenbach Steamship Co. (Inc.) as a common carrier for the transportation of dutiable merchandise and for the lading and unlading of bonded goods under the act of February 13, 1911, is approved, and a copy is herewith inclosed to be placed upon your files.

Respectfully, ANDREW J. PETERS,
(91544.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34779.)

Invoices.

Invoices not made in accordance with the amended consular regulations, published in T. D. 34542, or when not stating the name of the seller to be rejected by collectors.

TREASURY DEPARTMENT, *September 26, 1914.*

SIR: The department is in receipt of your letter of the 15th instant, relative to the extension of the time in which invoices on the forms

prescribed in the amended consular regulations, published in T. D. 34542, should be required.

In a letter dated July 1, 1914, you were advised that for a time you should not refuse to accept invoices made out on the old forms, and at the same time the Secretary of State was advised that consuls should be instructed not to refuse to certify the invoices for a reasonable time when made on the forms used prior to July 1, 1914.

It now appears that some shippers are making no attempt to comply with the new regulations and state that they will continue to use the old forms until the consuls require the change to be made.

The department is of the opinion that four months from July 1, 1914, the time when the new consular regulations became effective, is ample for all shippers to acquaint themselves with the new forms and to comply therewith. You are, therefore, instructed to reject invoices not made in accordance with the consular regulations as promulgated in T. D. 34542, when certified after October 31, 1914.

You should also refuse to accept invoices signed by the agent of the purchaser when such invoices do not state the name of the person from whom the goods were purchased. In either case entry may be permitted on a pro forma invoice and a bond taken for the production of a corrected consular invoice.

Respectfully, ANDREW J. PETERS,
(93120.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34780.)

Change of headquarters port.

Removal of headquarters port in District No. 18 (Florida).

TREASURY DEPARTMENT, *September 28, 1914.*

To collectors of customs and others concerned:

The appended act of Congress, approved September 24, 1914, transferring the headquarters of the customs district of Florida from Jacksonville to Tampa, is published for the information of all concerned.

(100000–18.) ANDREW J. PETERS, *Assistant Secretary.*

[Public No. 201, 63d Congress—H. R. 6433.]

An Act To relocate the headquarters of the customs district of Florida.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That hereafter the headquarters of the customs district of Florida shall be at Tampa, in said State.

Approved, September 24, 1914.

(T. D. 34781.)

Drawback on medicinal preparations.

Drawback on medicinal preparations designated as corrosive sublimate and calomel manufactured by the Powers-Weightman-Rosengarten Co., of Philadelphia, Pa., with the use of imported metallic mercury.

TREASURY DEPARTMENT, *September 28, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on medicinal preparations designated as corrosive sublimate and calomel manufactured by the Powers-Weightman-Rosengarten Co., of Philadelphia, Pa., with the use of imported metallic mercury (quicksilver).

The allowance shall not exceed the quantity of imported metallic mercury appearing in the exported preparations as shown by the sworn statement of the manufacturers, dated August 17, 1914, which is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(102387.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Philadelphia, Pa.*

(T. D. 34782.)

Hand reading glasses.

Hand reading glasses or magnifying glasses dutiable as optical instruments at the rate of 35 per cent ad valorem under paragraph 93, tariff act of 1913.

TREASURY DEPARTMENT, *September 28, 1914.*

SIR: The department duly received your letter of the 1st instant, inviting attention to a variance in practice in the classification of hand reading glasses or magnifying glasses, one port assessing duty thereon at the rate of 35 per cent ad valorem as optical instruments under paragraph 93 of the tariff act and another classifying them as microscopes and assessing duty at the rate of 25 per cent ad valorem under paragraph 94 of the said act.

You submit with your letter communications from two dealers in optical goods, one of whom, a manufacturer of microscopes and accessories, expressing the opinion that the articles should be considered in the class of microscopes, and the other that, while strictly speaking, any apparatus which magnifies an object so as to permit of such investigation as is not possible with the natural eye, may be termed a microscope, yet opticians never consider magnifying glasses a microscope and that the term is considered to apply to articles that contain a combination of lenses with the possibility of adjustment of focus.

While the question of the proper classification of these reading glasses is not free from doubt, they do not, in the opinion of the department, respond to the ordinary understanding of the term microscope, nor does it appear that they are so known commercially, and you are accordingly directed to assess duty upon reading glasses as optical instruments at the rate of 35 per cent ad valorem under paragraph 93 of the tariff act, leaving the importers, if dissatisfied, to their remedy by protest.

Respectfully, ANDREW J. PETERS,
(102838.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34783.)

Compasses.

Compasses imported in an incomplete state and intended to be used in the manufacture of the articles enumerated in paragraph 356, tariff act of 1913, are dutiable at the rate of 50 per cent ad valorem under the said paragraph.

TREASURY DEPARTMENT, *September 28, 1914.*

SIR: The department duly received your letter of the 29th ultimo, further in regard to the proper classification of compasses valued at less than 20 cents per dozen, suitable for use in the manufacture of jewelry, which it appears are assessed with duty at one port at the rate of 20 per cent ad valorem under paragraph 167 of the tariff act as manufactures of metal not otherwise specially provided for and at another port at the rate of 50 per cent ad valorem as materials of metal used in the manufacture of jewelry under paragraph 356 of the said act.

In a letter to you under date of May 25, 1910, the department ruled that compasses imported in an incomplete state and intended to be used in the manufacture of the articles enumerated in the first part of paragraph 448 of the tariff act of 1909 were dutiable at the rate of 75 per cent ad valorem under the said act, and the Board of United States General Appraisers, in Abstract 34003 (T. D. 33848) and Abstract 34034 (T. D. 33872), affirmed your decision in assessing duty under paragraph 448 upon compasses similar in character to those under consideration.

The board, in Abstract 35167 (T. D. 34307), overruled the protests of the importers that small complete compasses used in the backs of watches, in field glasses, and other instruments were dutiable under paragraph 109 or 199 of the tariff act of 1909, without affirming your decision in assessing duty on the articles at the rate of 75 per cent ad valorem, the board expressing the opinion that the compasses fell more properly within the designation in paragraph 448 for "articles of every description, finished or partly finished, * * * composed

* * * in chief value of * * * brass, * * * designed to be * * * carried on or about or attached to the person," and that they were therefore properly dutiable at the rate of 85 per cent ad valorem under the said paragraph. In a later decision, however, Abstract 36151 (T. D. 34668), involving the classification of small compasses composed of brass and glass, brass chief value, and which articles the board stated were similar to those the subject of its decision in Abstract 35167, it overruled the claim of the importers that the merchandise was properly dutiable under paragraph 109 or 199 of the tariff act of August 5, 1909, and affirmed your assessment of duty upon the compasses at the rate of 75 per cent ad valorem under paragraph 448 of the said act.

Following the department's instructions in its letter of May 25, 1910, above referred to, and in harmony with the board's decisions cited, compasses of the character the subject of your letter are properly dutiable at the rate of 50 per cent ad valorem under paragraph 356 of the tariff act as materials of metal suitable for use in the manufacture of the articles enumerated in the said paragraph. You will be governed accordingly.

Respectfully, ANDREW J. PETERS,
(93783.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34784—G. A. 7598.)

Shoe buttons.

1. MOTHER-OF-PEARL SHOE BUTTONS—ACT OF 1913.

Shoe buttons made of mother-of-pearl under the act of 1913 are dutiable at 15 per cent under the *eo nomine* provision of paragraph 339, and not as buttons of shell and pearl, as provided for in the same paragraph.

2. CONSTRUCTION OF A STATUTE—MOST SPECIFIC PROVISION.

When Congress has designated an article by a specific name and by such name imposed a duty upon it, general terms in the same act, although sufficiently broad to comprehend such article, are not applicable to it.—Arthur *v.* Lahey (96 U. S., 112).

United States General Appraisers, New York, September 21, 1914.

In the matter of protest 746871 of Appelbee & Neuman against the assessment of duty by the collector of customs at the port of New York.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers; SOMERVILLE, G. A., not participating).

HAY, *General Appraiser:* The merchandise which is the subject of this protest is pearl buttons of a special design, shape, and strength. The testimony shows that they are used, made for, and commercially known as shoe buttons. They were assessed for duty under the following clause of paragraph 339 of the tariff act of 1913: "Buttons of shell and pearl * * * below twenty-six lines, 45 per centum ad

valorem." The importer contends that they should be assessed under the following provision of the same paragraph: "Shoe buttons, 15 per centum ad valorem." Paragraph 339 takes the place of paragraph 427 of the tariff act of 1909. A significant change was made by Congress in the reenactment of the paragraph. In paragraph 427 of the act of 1909 the kinds of shoe buttons that were provided for were expressly stated. They must have been made of paper, board, papier-mâché, pulp, or other similar material, and not specially provided for in the section. In paragraph 339 shoe buttons as such, and without qualification, are expressly provided for.

It is a well-established principle in the construction of tariff laws that an *eo nomine* provision is to be taken as more specific than a general provision which clearly covers the same merchandise, and that wherever an article is designated by name it should be classified under the paragraph wherein such name appears rather than under some paragraph under the general terms of which it would appropriately come. In Arthur *v.* Lahey (96 U. S., 112) this rule is laid down by the Supreme Court as follows:

> When Congress has designated an article by its specific name, and imposed a duty upon it by such name, general terms in a subsequent act, or in a later part of the same act, although sufficiently broad to comprehend such article, are not applicable to it.

We think that this is particularly applicable to the construction of the paragraph here under consideration, in view of the fact that Congress, with full knowledge of this rule, eliminated those terms which under the old act qualified shoe buttons.

It seems quite clear that the merchandise in question should be assessed as shoe buttons and duty levied thereon accordingly. The claim in the protest under paragraph 339 is therefore sustained and the collector directed to reliquidate the entry assessing duty at 15 per cent.

As to all other claims the protest is overruled.

(T. D. 34785—G. A. 7599.)

New trials in reappraisement cases before a single general appraiser.

1. After a rea praisement case has been decided by a single general appraiser and an appeal from said decision has been made to the board of three general appraisers, the single general appraiser has lost jurisdiction and can not entertain the application for a new trial.

2. Under the statute only the "board of three general appraisers, or a majority of them," is empowered to grant a new trial, and, consequently, a single general appraiser has not the power to grant a new trial in a case in which he has rendered his decision.

In the matter of reappraisements 75244, etc., of Knauth, Nachod & Kuhne.

COOPER, *General Appraiser:* This case was tried and submitted on the 17th day of August, 1914, and on the 19th day of August, I, the

general appraiser before whom the case was tried, decided the case and affirmed the action of the appraiser in making the advance in the price and value of the merchandise to make market value, as provided by law. On the 24th of August the importer appealed said case to a board of three general appraisers in the manner provided by law. On the 28th of August the importer filed his motion for a new trial.

While I think the motion possesses merit and a new trial should be granted, if the law authorizes a general appraiser to do so, I am constrained to overrule this motion because I do not believe that I have jurisdiction of the person or the subject matter or that a single general appraiser has the lawful power to grant a new trial in a reappraisement case. The appeal by the importer removes this case from my jurisdiction, and the exclusive jurisdiction over the case now rests with and belongs to the board of three general appraisers, to which tribunal the case has been appealed. Furthermore, I do not find in the law any authorized power for a single general appraiser to grant a new trial in a reappraisement case, and, unless this power is inherent in the general appraiser, a new trial can not be ordered. I believe the power would be inherent if the statute was silent as to the power, but subsection 12 of section 28 of the act of 1909, which was not repealed by the act of 1913, provides for new trials in the following language:

> The board of three general appraisers, or a majority of them, who decide the case, may, upon motion of either party made within 30 days next after their decision, grant a rehearing or a retrial of said case when, in their opinion, the ends of justice may require it.

So it seems that only "*the board of three general appraisers, or a majority of them*" is empowered by the statute to grant a new trial. The Board of General Appraisers has power under the law to make "such rules of evidence, practice, and procedure, not inconsistent with the statutes, as may be deemed necessary for the conduct and uniformity of its proceedings and decisions and the proceedings and decisions of the boards of three thereof," and any rule made by the board in obedience to or in conformity with this law becomes the law, but a rule made by the Board of General Appraisers in contravention of the law is void. The board in its rules authorizes the granting of new trials in the following language:

> RULE XXX. A rehearing or retrial may be granted by the board or general appraiser rendering the decision on motion of either party in any case decided under provisions of the customs administrative act and the acts amendatory thereof * * *. [The balance of the rule describes and defines the mode of procedure.]

The granting of new trials is not a mode of practice or procedure, and under the law the Board of General Appraisers is not authorized or empowered to make a rule (law) authorizing a single general appraiser to grant or deny a new trial in a reappraisement case. Such

action would be *ultra vires*. The law expressly authorizes and provides for new trials, and the board can not change the law. Applying the rule '*Expressio unius personæ vel rei est exclusio alterius*," the law having provided how a new trial may be granted, no other method can be provided or enforced by rules of the Board of General Appraisers. The reason for the law is apparent and consistent because, when a reappraisement case is tried upon appeal, it is tried *de novo* and the necessity for the power to grant a new trial by the single general appraiser, in order to protect either the importer or the Government, does not exist.

The application for a new trial is denied.

SEPTEMBER 9, 1914.

(T. D. 34786—G. A. 7600.)

Cork disks.

Cork disks about 1 inch in diameter and one-sixteenth of an inch thick, made from granulated cork and used as a lining for metal bottle caps, are not corks as that term is commonly understood, but are manufactures of granulated cork, subject to duty at the rate of 30 per cent ad valorem under the last provision of paragraph 429, tariff act of 1909.

United States General Appraisers, New York, September 22, 1914.

In the matter of protest 727170 of Max Frankel Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (McCLELLAND, SULLIVAN, and BROWN, General Appraisers).

McCLELLAND, *General Appraiser:* The merchandise which is the subject of this protest is invoiced as "cork disks" and was returned by the appraiser as "manufactured corks over three-fourths of an inch in diameter" and assessed with duty at the rate of 15 cents per pound under the second provision in paragraph 429 of the tariff act of 1909. The full paragraph reads as follows:

429. Cork bark cut into squares, cubes, or quarters, eight cents per pound; manufactured corks over three-fourths of an inch in diameter, measured at larger end, fifteen cents per pound; three-fourths of an inch and less in diameter, measured at larger end, twenty-five cents per pound; cork, artificial, or cork substitutes, manufactured from cork waste or granulated cork, and not otherwise provided for in this section, six cents per pound; manufactures, wholly or in chief value of cork, or of cork bark, or of artificial cork or cork substitutes, granulated or ground cork, not specially provided for in this section, thirty per centum ad valorem.

It is claimed that duty should have been assessed at only 6 cents per pound under the third provision of this paragraph, or in the alternative at 30 per cent ad valorem under the remaining provision of the paragraph.

The importer was the only witness called to testify and he made the statement, based on long experience, that there is no difference between the commercial and the common understanding of what a cork really is. These disks are about an inch in diameter and

one-sixteenth of an inch thick and are not, therefore, in the common acceptation of the term, corks. They could not be used as corks for the reason that they are of such flimsy character as to unfit them for use as bottle stoppers. From the uncontradicted testimony of the importer they are made from granulated cork and in use serve only as linings for flat metal bottle caps or stoppers, which are by a mechanical device pressed down tightly with their edges crimped around the tops of the necks of bottles, the purpose of such lining being to prevent evaporation of the contents of the bottle.

We think it perfectly apparent that these disks are not corks as that term is commonly understood and it therefore follows that the collector's assessment is erroneous. It would seem equally clear that they do not fall within the provision for "cork, artificial, or cork substitutes, manufactured from cork waste or granulated cork," and that consequently the claim for duty at 6 cents per pound is untenable; but as they are manufactures of granulated cork, designed for a special use, they fall within the last provision of paragraph 429, *supra*, and we so hold.

The collector's decision is reversed accordingly.

(T. D. 34787—G. A. 7601.)

Trinitrotoluol.

Trinitrotoluol can not be classified as an explosive substance used for artillery, etc., under paragraph 435, tariff act of 1909, in the absence of evidence showing its primary and general use as such, it being in evidence that it is also used for other purposes. Consequently, upon this record, a classification following G. A. 6171 (T. D. 26786), which case held it dutiable as a preparation of coal tar under paragraph 15, and not free of duty under paragraph 536, will not be disturbed.

United States General Appraisers, New York, September 24, 1914.

In the matter of protests 696325, etc., of F. H. Shallus against the assessment of duty by the collector of customs at the port of Baltimore.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers).

Brown, *General Appraiser:* The merchandise is imported by the Keystone National Powder Co., of Sinnamahoning, Pa. It is invoiced as an explosive substance, and is stated by the appraiser to consist of trinitrotoluol. It was classified under the clause in paragraph 15, traffic act of 1909, reading:

All other products or preparations of coal tar, not colors or dyes, not specially provided for in this section, twenty per centum ad valorem.

It is claimed to be free of duty under paragraph 536, wherein are enumerated a number of coal-tar products, or dutiable under paragraph 435, reading:

Gunpowder, and all explosive substances for mining, blasting, artillery, or sporting purposes, when valued at 20 cents or less per pound, 2 cents per pound; * * *.

The claim under paragraph 536 is disposed of by the decision of Judge McClelland in G. A. 6171 (T. D. 26786) in passing on a practically identical provision in the act of 1897 (which was the only claim in that case), wherein he said:

> It appears from the language of this paragraph that Congress intended to and did distinguish between toluol, nitrotoluol, and binitrotoluol, and that there is no provision either in this paragraph or in the other paragraphs of the tariff act specifically providing for trinitrotoluol. * * * Being omitted from the free list, wherein nitrotoluol and binitrotoluol are enumerated, it would seem as though trinitrotoluol would fall within the provision of paragraph 15 under which the collector assessed duty.

In that case no claim was made as an explosive, similar to the claim here made under paragraph 435, although a provision identical with paragraph 435, act of 1909, appeared as paragraph 422 of the act of 1897. Therefore, that decision is not necessarily conclusive on the second issue involved between paragraphs 15 and 435.

This case was submitted on sample. The board reopened the case and ordered an analysis to identify the material and asked the chemist to report on its principal uses. The importer was notified of the further hearing, but did not appear or offer any testimony. The Government chemist, Dr. Berry, reported in writing as follows:

> Samples respectively consist of trinitrotoluol (not C. P.).
>
> Generally speaking, all nitro coal-tar compounds, under favorable conditions of heat and pressure, are more or less explosive.
>
> Trinitrotoluol is employed as one of a number of ingredients entering into the composition of explosive powders, among which may be mentioned "Expedite," "Negro Powder No. 2," "Propellant Powder," etc.
>
> Other applications for trinitrotoluol are noted as follows, * * *:
>
> For preparation of trinitrobenzoic acid (also an explosive material).
>
> For preparation of a brown cotton dye by fusing with sulphur and sodium sulphide.
>
> For preparation of condensation products with nitrosodimethyl-anilin, for use as a basis in the preparation of pharmaceutical products and dyes.

On examination concerning his report by the Government counsel and the board, he also stated that he was of the opinion that it is an explosive itself under the name of trotol. He could not say definitely what its principal or primary use was, but he thought that it was in the manufacture of other explosives.

On this indefinite and incomplete record the board will not overturn the classification heretofore made of this substance as a coal-tar derivative, the burden being on the importer to show its primary use as an explosive substance "used for mining, blasting, artillery, or sporting purposes," the evidence before us being too indefinite to relieve him of that burden.

Therefore, on this record as it stands, the protests are overruled.

(T. D. 34788—G. A. 7602.)

Fish in tins.

The provision for "all other fish (except shellfish) in tin packages" in paragraph 270, act of 1909, is more specific than the provision for "fish, fresh, smoked, dried, salted, frozen, packed in ice, or otherwise prepared for preservation, not specially provided for in this section," in paragraph 273 of said act.

United States General Appraisers, New York, September 24, 1914.

In the matter of protests 706378, etc., of Chee Chong & Co. *et al.* against the assessment of duty by the collector of customs at the port of San Francisco.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers).

Brown, *General Appraiser:* The merchandise here involved was classified as fish in tin packages at 30 per cent ad valorem and fish in oil at the appropriate rates under paragraph 270, act of 1909. It is claimed to be dutiable at one-half of 1 cent per pound under the provision in paragraph 272 for herrings or at three-fourths of 1 cent per pound under paragraph 273 as fish, salted or otherwise prepared for preservation, or as fish, skinned or boned, under said paragraph 273, or as mackerel, halibut, or salmon at 1 cent per pound under the same paragraph. Some of these protests are submitted on the record and testimony in protest 706378 and some upon the records in protests 706378 and 676798.

As to those classified as fish in oil under paragraph 270, the protests must be overruled under the decision of the United States Court of Customs Appeals in Smith *v.* United States (5 Ct. Cust. Appls., —; T. D. 34008).

As to those classified as fish in tins at 30 per cent, the issue is between the clause in paragraph 270 for "all other fish * * * in tin packages" and the provision in paragraph 273 for "fish, fresh, smoked, dried, salted, pickled, frozen, packed in ice, or otherwise prepared for preservation." The former must be held to be more specific, for the reason that while they both include all kinds of fish (not packed in oil), the former is limited to such fish in tin packages.

Judge Putnam, in Loggie *v.* United States (137 Fed., 813; T. D. 26340), held that the provision in paragraph 258, act of 1897, for "fish in packages containing less than one-half barrel and not specially provided for," was more specific than that in paragraph 261, which is identical in language with the provision in paragraph 273, act of 1909, under which claim is here made. In discussing the provision in paragraph 258 of the act of 1897, the court says:

That covers not only frozen fish, but fresh fish, fish prepared for preservation in any form, fish smoked, dried, salted, pickled, or packed in ice. Therefore, it is so sweeping that on the construction of the act insisted on by the importers they are unable to point out any class of fish to which the provision relative to fish in packages con-

taining less than one-half barrel can have any reference, unless to importations of the character before us.

This reasoning is directly applicable to the issue between the paragraphs here in dispute. Therefore, giving the evidence to the effect that the fish were salted or otherwise prepared for preservation its full probative force, the protests must nevertheless be overruled. It may be further noted that the provision under which classification is made is not limited by the words "not specially provided for," while the first clause of paragraph 273, under which claim is made, is so limited.

As to the claim as herrings, mackerel, salmon, etc., there was no evidence submitted which would bring these fish into any of the specifically mentioned classes. As to the claim as fish skinned or boned, there is nothing in the record before us on that point and no testimony offered in support of that claim.

See also Abstract 36300 (T. D. 34727).

(T. D. 34789.)

Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, Somerville, and Hay.

BEFORE BOARD 1, SEPTEMBER 22, 1914.

No. 36548.—WAX FRUITS.—Protest 728832 of Poirier & Lindeman (New York). Opinion by McClelland, G. A.

Wax in the form of fruits or nuts, classified as artificial fruit under paragraph 438, tariff act of 1909, was held dutiable as manufactures of wax (par. 462). United States *v.* Dieckerhoff (4 Ct. Cust. Appls., 384; T. D. 33796) followed.

No. 36549.—OXIDE OF IRON.—Protest 716466 of Read, Holliday & Sons (New York). Opinion by McClelland, G. A.

Merchandise used in purifying gas, classified as a color under paragraph 56, tariff act of 1909, was held dutiable as oxide of iron (par. 117).

No. 36550.—EMBROIDERED LEATHER GLOVES.—Protest 641550 of G. W. Sheldon & Co. (New York). Opinion by McClelland, G. A.

United States *v.* Wertheimer (4 Ct. Cust. Appls., 338; T. D. 33528) followed as to embroidered leather gloves.

No. 36551.—ARTIFICIAL FLOWERS.—Protests 365779, etc., of Rosenthal-Sloan Millinery Co. (St. Louis). Opinion by McClelland, G. A.

On the authority of United States *v.* Edson (5 Ct. Cust. Appls., —; T. D. 34128) artificial flowers classified under paragraph 425, tariff act of 1897, were held dutiable as manufactures in part of metal (par. 193).

No. 36552.—GRAIN LEATHER—SPLIT LEATHER.—Protests 712061, etc., of Davies, Turner & Co. (New York). Opinion by McClelland, G. A.

Grain leather, tanned, unhaired and split, classified under paragraph 450, tariff act of 1909, was claimed dutiable as rough leather (par. 451). Protests overruled. United States *v.* Robertson (1 Ct. Cust. Appls., 379; T. D. 31458) followed.

No. 36553.—BUFF LEATHER IN STRIPS.—Protests 704511, etc., of Marcel Schmitt (New York). Opinion by McClelland, G. A.

Buff leather in strips used on polishing wheels, classified as manufactures of leather under paragraph 452, tariff act of 1909, was held dutiable as leather cut into forms (par. 451). Spalding *v.* United States (3 Ct. Cust. Appls., 356; T. D. 32910) followed.

No. 36554.—CALFSKINS, DRESSED AND FINISHED.—Protests 704643, etc., of O. G. Hempstead & Son (Philadelphia). Opinion by McClelland, G. A.

Worsdell *v.* United States (2 Ct. Cust. Appls., 270; T. D. 31977) and Knauth *v.* United States (4 Ct. Cust. Appls., 58; T. D. 33307) followed as to sheep and calf skins, dressed and finished, classified at 15 per cent ad valorem under paragraph 451, tariff act of 1909. Protests overruled.

No. 36555.—DICED LEATHER.—Protest 728012 of No Name Hat Manufacturing Co., and protests 710456, etc., of A. Wimpfheimer & Co. (New York). Opinions by McClelland, G. A.

Leather, the surface of which has been subdivided into small squares known as "dicing," made by pressure from a disk, was held not to be gauffred under the provisions of paragraph 451, tariff act of 1909. United States *v.* Brown (5 Ct. Cust. Appls., —; T. D. 34380) followed. Protests sustained in part.

No. 36556.—PROTESTS OVERRULED.—Protest 729910 of C. J. Tower (Buffalo) and protest 725389-4629 of Woodward, Wight & Co. (Ltd.) (New Orleans). Opinions by McClelland, G. A.

Protests unsupported; overruled.

No. 36557.—JEWELRY—IMITATION JET—SMOKERS' ARTICLES—RUBBER JEWELRY—LONG CHAINS.—Protests 635396, etc., of The American Express Co. et al. (New York).

Merchandise classified under paragraph 448, tariff act of 1909, was held dutiable as follows: (1) Mesh bags, coin holders, etc., as manufactures of metal (par. 199); (2) imitation jet articles under paragraph 109; (3) cigar cutters, lamps, etc., as smokers' articles (par. 475); (4) articles made of vulcanized rubber under paragraph 463. G. A. 7129 (T. D. 31089), United States *v.* Sheldon (2 Ct. Cust. Appls., 283; T. D. 32034), G. A. 7102 (T. D. 30942), G. A. 7103 (T. D. 30943), Abstract 27530 (T. D. 32149), and Abstract 35744 (T. D. 34496) followed.

Long chains were held commonly or commercially known as jewelry under the provisions of paragraph 448.

SULLIVAN, *General Appraiser:* * * * It will be noted that in many instances the examiners returned similar merchandise as jewelry. The Government contended that this is merely a conclusion of law and not a statement of fact, but did not offer any direct proof as to whether the chains are commonly and commercially known as jewelry.

The proposition, then, submitted, around which all the importers' testimony hinged, was whether or not these so-called long chains were commonly and commercially known as jewelry.

In Abstract 13551 (T. D. 27729) certain gun-metal guard chains, very similar to those under consideration, were held to have been properly classified as jewelry under the tariff act of 1897.

In G. A. 4688 (T. D. 22125) chains made of brass in imitation of gold, about 30 inches in length, arranged with ring, hook, or swivel, suitable for use as watch guards to be worn about the neck, were held by the board to be of a class commonly known as jewelry. *

In Abstract 14892 (T. D. 28074) the board overruled a protest relating to long chains composed in chief value of glass beads, which it was contended had been improperly classified either as jewelry under paragraph 434 or beaded articles under paragraph 408 of the tariff act of 1897.

In Abstract 35120 (T. D. 34307), Abstract 35337 (T. D. 34378), Abstract 35405 (T. D. 34416) the board held that certain long chains, identical in character with those under consideration, were properly dutiable under the tariff act of 1909, paragraph 448, at the rate of 60 per cent ad valorem as jewelry. These protests were lodged at Chicago and Philadelphia, and the appraiser's return in each instance was in accord with the return of the appraiser in the present cases.

The testimony in our opinion is practically conclusive that the long chains under consideration were and are commonly and commercially known as jewelry. While there may be some dispute, the overwhelming weight of the testimony establishes this fact, and that the trade by common usage and custom has recognized long chains like those under consideration as jewelry. It is not controlling that these articles may occasionally be used for other than jewelry purposes. In sifting all the testimony to the bottom, in the last analysis it is shown that this merchandise is recognized as jewelry, and we so find. * * *

No. 36558.—Tops for Hatpins.—Protest 571913 of Albert Lorsch & Co. (New York). Opinion by Sullivan, G. A.

Hatpin tops classified as manufactures of paste under paragraph 109, tariff act of 1909, were held dutiable as imitation precious stones (par. 449). G. A. 7158 (T. D. 31254) followed.

No. 36559.—Jewelry.—Protests 601613, etc., of C. B. Richards & Co. et al. (New York). Opinion by Sullivan, G. A.

Cohn *v.* United States (4 Ct. Cust. Appls., 378; T. D. 33536) and United States *v.* Kraemer (5 Ct. Cust. Appls., —; T. D. 34474) followed as to articles claimed to be commercially known as jewelry under the provisions of paragraph 448, tariff act of 1909.

No. 36560.—Beads.—Protests 703198, etc., of A. & H. Veith (New York). Opinion by Sullivan, G. A.

Rhinestones and colored imitation stones, with foil backs set in white or blue paste or porcelain pierced with two holes, were held dutiable as glass beads under paragraph 421, tariff act of 1909. Protests sustained in part. Abstract 35260 (T. D. 34321) followed.

No. 36561.—Weight of Diamonds.—Protests 674635–43171, etc., of Stein & Ellbogen Co. (Chicago). Opinion by Sullivan, G. A.

Abstract 34809 (T. D. 34201) followed as to weight of diamonds. Protests overruled.

No. 36562.—Wax for Phonograph Records.—Protest 678900 of A. H. Ringk & Co. (New York). Opinion by Sullivan, G. A.

Wax especially prepared for use in the manufacture of phonograph and other records, classified as a manufacture of wax under paragraph 462, tariff act of 1909, was held dutiable as a nonenumerated manufactured article (par. 480). Abstract 28036 (T. D. 32379) followed.

No. 36563.—Artificial Silk.—Protest 613807 of A. Eckstein (New York). Opinion by Sullivan, G. A.

An article called "bandchen," classified as a manufacture of pyroxylin by similitude under paragraph 17, tariff act of 1909, was held dutiable as artificial silk in the form of singles (par. 405), as claimed.

No. 36564.—Advertising Pencils.—Protest 643248 of Albert Bachert (New York). Opinion by Sullivan, G. A.

Advertising pencils, classified as celluloid articles under paragraph 17, tariff act of 1909, were claimed dutiable as pencils (par. 472). Protest overruled. Abstract 34661 (T. D. 34165) followed.

No. 36565.—Pyroxylin Jewelry—Celluloid Bracelets.—Protests 669300, etc., of the American Bead Co. et al. (New York et al.). Opinion by Sullivan, G. A.

Celluloid bracelets classified as manufactures of pyroxylin under paragraph 17, tariff act of 1909, were held dutiable as jewelry (par. 448). United States *v.* Kraemer (5 Ct. Cust. Appls., —; T. D. 34474) followed.

No. 36566.—Thermometers.—Protests 667087, etc., of D. S. Hesse & Bro. et al. (New York), and protests 605709, etc., of C. H. Wyman & Co. (St. Louis). Opinions by Sullivan, G. A.

Protests overruled as to thermometers classified as in chief value of blown glass under paragraph 98, tariff act of 1909, and paper wall pockets classified as manufactures of paper (par. 420).

No. 36567.—Small Clocks—Toys.—Protest 660807 of A. Strauss & Co. (New York). Opinion by Sullivan, G. A.

Small clocks classified as manufactures of metal under paragraph 199, tariff act of 1909, were held dutiable as toys (par. 431).

No. 36568.—Rosaries.—Protest 602221 of Bayer & Pretzfelder Co. (New York), and protests 642086, etc., of R. Pierson & Co. (St. Louis). Opinions by Sullivan, G. A.

Rosaries composed in chief value of metal were held dutiable under paragraph 199, tariff act of 1909. G. A. 7053 (T. D. 70731) followed. Protests sustained in part.

No. 36569.—Protests Overruled.—Protests 370880, etc., of M. J. Corbett & Co. et al., protests 638851, etc., of Geo. R. Gibson Co., protests 618171, etc., of Samstag & Hilder Bros. et al., and protests 668039, etc., of A. Strauss & Co. (New York), and protest 589902 of C. D. Bunker & Co. (San Francisco). Opinions by Sullivan, G. A.

Protests unsupported; overruled.

No. 36570.—Protests Abandoned.—Protests 45716f, etc., of Simpson, Crawford & Simpson et al. (New York).

Protests abandoned.

Before Board 2, September 22, 1914.

No. 36571.—Legality of Reappraisement.—Protest 724140 of the Lewisohn Importing & Trading Co. (Ltd.) (New York).

Fischer, *General Appraiser:* The merchandise in question (feathers) was advanced in value by the appraiser by disallowing a 5 per cent cash discount appearing on invoice and deducted by importers on entry, which advance was finally affirmed by the board on appeal to rereappraisement. Upon reliquidation, pursuant to the board's decision, the importers protested, alleging "that the Board of United States General Appraisers

proceeded upon a wrong theory and contrary to law in disallowing the 5 per cent discount deducted on entry."

In Lewisohn *v.* United States (5 Ct. Cust. Appls., —; T. D. 34329), which involved precisely the same facts as are here presented, the court held that "the allowance or disallowance of a cash discount, upon basic value of merchandise, in the nature of interest, dependent in amount upon the time of payment, and whether or not the same enters into the dutiable value of the merchandise, is a matter of legal determination" and not the ascertainment of a fact. And in the concluding paragraph of its opinion therein, which sustained the importers' contention, the court said that—

> Where an invoice sets out the entire transaction—gross price, rate and amount, the terms of discount claimed, and net price, all fully extended upon the invoice—that it can not be said that a finding of "prices as invoiced" is a finding of fact that one or the other of such invoice prices is actual market value, or that the determination of the board that such an invoiced discount should or should not be disallowed was other than as said in Arthur *v.* Goddard (96 U. S., 145), "a construction of the invoice."

In harmony with the ruling in the Lewisohn case, *supra*, therefore, we sustain the claim of the importers and reverse the action of the collector.

No. 36572.—Articles Made on the Lever Machine.—Protests 716363, etc., of H. Bauman & Co. et al., and protests 674834, etc., of J. J. Gavin & Co. et al. (New York). Opinions by Howell, G. A.

Protests overruled as to embroidered wearing apparel and laces made in part on the Lever machine, classified under paragraph 350, tariff act of 1909.

Before Board 3, September 22, 1914.

No. 36573.—Sugar Tare.—Protests 704599, etc., of the Franklin Sugar Refining Co. (Philadelphia).

Somerville, *General Appraiser:* The importations consist of sugar in bags. In assessing duty thereon it appears that the surveyor deducted from the gross weight of the sugar a uniform schedule tare of 2½ pounds, in accordance with T. D. 32976. The importers claim that duty was assessed upon an excessive weight of the sugar, or, in other words, that not sufficient tare was allowed. The surveyor reports in each instance that actual tare was not ascertained for the reason that the permit did not so direct. Furthermore, the dock books of the United States weigher show an approximate measurement of 29 by 49 inches for the bags.

The protests have been on the Philadelphia docket three different times. On the last occasion a further continuance was requested by the importers, but denied. Thereupon the importers called as their witnesses the official weighers in connection with the importations covered by protests 704599 to 704604, inclusive, but elicited no further information than as already shown by the official reports. We find it unnecessary to pass upon the merits of these last-named protests, as the importers have furnished the board with no basis upon which a reliquidation could be made.

As to protests 724495 to 724498, inclusive, the importers contend that the tare to be allowed should be calculated on the exact measurement of the bags, in accordance with T. D. 32976, as amended by T. D. 33701, which amendment, so far as pertinent, reads as follows:

> Where the superficial area of the bags varies by more than 2 per cent from the standard area of 1,392 square inches, then the schedule tare of 2.5 pounds should be increased or decreased in the same proportion as the superficial area of the bags exceeds or is less than 1,392 square inches.

According to the importers' figures, the application of the foregoing basis would increase the tare variously from 2.5476 to 2.604 pounds per bag in the case of the four importations covered by the protests last enumerated. It appears from the testimony, however, that the weigher in these instances—evidently on his own initiative—did

make an actual tare of the bags in accordance with the regulations and noted the same in his dock books forwarded to the surveyor. His result shows an average tare less than the schedule tare of 2½ pounds per bag allowed. The importers therefore would seem to have no grounds for complaint. It is nevertheless urged by counsel for the importers that the unauthorized or unofficial report of a subordinate officer, such as that of the assistant weigher, and which was admitted in evidence, should not be permitted to overrule the official report of the surveyor to the effect that actual tare had not been taken.

We can see no reason for taking such view of the matter. The fact remains that an actual tare was taken by somebody in the required manner, and is to be regarded as more reliable than a conventional tare, or even a tare based simply on the measurement of the bags. As held by the court of customs appeals in American Sugar Refining Co. *v.* United States (3 Ct. Cust. Appls., 69; T. D. 32352), "a guess or estimate of a proper allowance for tare may not be substituted for a finding arrived at according to the regulations that control."

There is no reason for disturbing the action of the surveyor in any of these cases. The protests are accordingly overruled and the decision of the surveyor affirmed in each instance.

No. 36574.—SHORTAGE.—Protest 704203 of Austin, Nichols & Co. (New York). Opinion by Somerville, G. A.

Protest overruled claiming an allowance in duty for macaroni arriving in a worthless condition. United States *v.* Brown (2 Ct. Cust. Appls., 189; T. D. 31943) and United States *v.* Brown (4 Ct. Cust. Appls., 102; T. D. 33374) noted.

No. 36575.—WOOL—NAPHTHALIN—TARE.—Protest 738214 of Thomas Kenworthy's Sons (Philadelphia). Opinion by Somerville, G. A.

G. A. 7304 (T. D. 32068) followed as to an allowance of tare for naphthalin packed in wool.

No. 36576.—COVERINGS OF LIQUIDS AND SEMILIQUIDS.—Protest 383212 of Andrew Baxter, protests 359056, etc., of Berlin Aniline Works, and protest 398723 of Labate & Lambrosa (New York). Opinions by Somerville, G. A.

United States *v.* Peabody (3 Ct. Cust. Appls., 130; T. D. 32383) followed as to coverings of liquids and semiliquids.

No. 36577.—PAPER—CANADIAN RECIPROCITY.—Protest 705066 of W. Stursberg Schell & Co., and protest 720105 of Walther & Co. (New York), and protests 623800, etc., of E. Dietzgen & Co. et al. (New York et al.). Opinions by Somerville, G. A.

American Express Co. *v.* United States (4 Ct. Cust. Appls., 146; T. D. 33434) followed as to wood pulp or paper imported from Austria, Germany, and Spain.

No. 36578.—OLD BURLAPS—PAPER STOCK.—Protest 723022 of Adams Paper Co. (Newport, Vt.). Opinion by Somerville, G. A.

Waste bagging used chiefly for paper making, classified as waste under paragraph 479, tariff act of 1909, was held entitled to free entry as paper stock (par. 644).

No. 36579.—OLD GUNNY BAGGING—RAGS.—Protests 725943, etc., of Castle, Gottheil & Overton et al., protests 722942, etc., of Herwig & Co. et al., and protests 726412, etc., of Hudson Trading Co. et al. (New York), and protest 726557 of J. T. Steeb & Co. (Seattle). Opinions by Somerville, G. A.

On the authority of G. A. 6603 (T. D. 28202), certain old gunny bagging classified as waste under paragraph 479, tariff act of 1909, was held entitled to free entry as rags (par. 660). Protests sustained in part.

No. 36580.—ABANDONMENT—NONIMPORTATION—BROKEN STATUE.—Protest 731586 of Austin, Baldwin & Co. (New York).

HAY, *General Appraiser:* This is a protest against the assessment of duty on a certain marble statue which was received in such a broken and damaged condition that the importer contends that it is not a statue at all. The testimony shows that the statue was broken into many pieces. It was a statue of a human figure, and the legs and arms were both broken off in fragments, some of the fingers and toes being broken into very small fragments. The importers upon receiving the same shipped it back to the insurance company to secure their claim for the value of the shipment. Were it not for the previous decisions of this board we would be inclined to the view that this was a nonimportation. The merchandise in question did not, and could not, enter into the commerce of this country as a statue. In its imported condition it was valueless; at best it had no other value than as fragments of a statue. The appraiser reports that these fragments could be put together, but, if this be true, when put together it would not be the article imported, and we think it is extremely doubtful from the testimony whether these fragments could be utilized in any way otherwise than as broken marble.

In this age, when efficiency and economy have made of every by-product in manufacture a valuable article of commerce, it would be difficult to find any tangible object that did not have some value. Under a broad or liberal application of the principle laid down in Lawder *v.* Stone (187 U. S., 281) and United States *v.* Habicht (1 Ct. Cust. Appls., 53; T. D. 31031), it would seem that when an article of imported merchandise has been so destroyed before it enters a port of the United States as to be valueless for use, as the commodity which the importer had ordered, it would cease to be a dutiable commodity. But this board has in Bache's case, G. A. 5741 (T. D. 25477), so distinguished Lawder *v.* Stone as to render it inapplicable to the circumstances and facts of the case at bar. The learned general appraiser writing the decision in the Bache case, *supra*, was clearly of the opinion that the case of United States *v.* Bache (59 Fed., 762) was more applicable to the facts before him than Lawder *v.* Stone. The facts before him were that certain glass had been broken into fragments during the voyage of importation. He says in the opinion:

The Bache case was distinguished from the Lawder case on the ground that the broken glass possessed some value for remanufacture.

We take it that if the importation possessed some value for other purposes than remanufacture the same principle would apply. In view of the fact that the testimony in the case at bar tends to show that the fragments of broken marble could be put together and that they unquestionably possessed some value, following Bache's case, G. A. 5741 (T. D. 25477), the protest is overruled. See also J. C. Hunt's case, Abstract 36289 (T. D. 34704).

No. 36581.—ROTTEN FRUIT.—Protests 569355, etc., of O. F. Maniscalco (Philadelphia).

HAY, *General Appraiser:* These protests were filed on June 14, 1911, and the case decided on the 5th of August, 1913. It was thereafter appealed to the Court of Customs Appeals, which remanded the case for a new trial (5 Ct. Cust. Appls., —; T. D. 34007) in the following language:

Said cause having heretofore been brought on to be heard before the court and due consideration thereon having been had, it is ordered that the decision of the Board of United States General Appraisers be, and the same is hereby, reversed, without prejudice to either party, and the said cause is remanded to said board for a new trial.

Pursuant to the mandate of the court, the case was placed upon the April calendar of the board and came on to be heard on April 22, 1914. At that hearing the case was submitted upon the following stipulation:

It is hereby stipulated and agreed between the parties hereto that the letter of the collector of customs at the port of Philadelphia, dated December 1, 1913, and now on

file with the papers, may be received in evidence for the purpose of showing the time when the lemons covered by these protests were actually landed.

Assuming that the record proves that the appraiser's report was made within 10 days after the date of landing, we are required to determine upon the record before us the merits of the case. There was no testimony whatever at either hearing to show the amount of decay in the fruit. It is therefore necessary to base our determination upon the record made at the office of the collector. This consists of the affidavits of the importer and the report of the Government officer who examined the merchandise. The presumption, of course, is in favor of the correctness of the action of the examiner and of the assessment of duty as made by the collector. With no evidence before us that was not before the collector, the record before him must clearly show that he was in error before the presumption in favor of his action is overcome. We have before us the conflicting testimony of the importer, an interested party, and that of the examiner, a sworn Government official, without any interest save that of discharging his duty. In a case of this same character, Di Cola's case, G. A. 6894 (T. D. 29689), this board laid down the rule with reference to the weight to be given to witnesses under like circumstances. In that case we said:

> It must be laid down as an almost universal rule that an importer has a greater interest in the outcome of an issue than has a Government official, sworn to the impartial discharge of a public duty; and where an importer's testimony with respect to his own goods is in direct conflict with that of a customs examiner having equal means of acquiring information as to the matter at issue, the latter's testimony is more reliable.

The importer having failed, under the rules of law above quoted, to establish the contention made by his protest, the same is overruled.

No. 36582.—Protests Overruled.—Protests 726296, etc., of L. Rubelli's Sons et al. (Philadelphia et al.). Opinion by Hay, G. A.

Protests unsupported; overruled.

Before Board 1, September 24, 1914.

No. 36583.—Sponges.—Protests 733254, etc., of Leousi, Clonney & Co. (New York). Opinion by McClelland, G. A.

Sponges classified as bleached were found to be not bleached and held dutiable accordingly under paragraph 68, tariff act of 1913. Abstract 36068 (T. D. 34629) followed.

No. 36584.—Embroidered Leather Gloves.—Protests 519388-38343, etc., of Wilson Bros. (Chicago). Opinion by McClelland, G. A.

United States *v.* Wertheimer (4 Ct. Cust. Appls., 338; T. D. 33528) followed as to embroidered leather gloves.

No. 36585.—Ornamental Grasses.—Protests 695858, etc., of H. Bayersdorfer & Co. (Philadelphia). Opinion by McClelland, G. A.

Protests overruled as to ornamental grasses classified under paragraph 438, tariff act of 1909. Bayersdorfer *v.* United States (175 Fed., 959; T. D. 30277) followed.

No. 36586.—Mosaic Cubes—Manufactures of Glass.—Protests 600427, etc., of V. Foscato (New York).

Sullivan, *General Appraiser:* The merchandise consists of small glass cubes, some of two colors and some of clear glass, returned at 60 per cent ad valorem under paragraph 98 of the tariff act of 1909. It is claimed dutiable at 45 per cent ad valorem under paragraph 109 of the same act. These tubes are rectangular in shape, about one-fourth of an inch in width by half an inch in depth. Some are of clear flint glass with gold leaf on one of the faces; the remainder are colored in the pot. They

are used for decorative purposes, from a cartoon or design made by an artist, the cubes being stuck upon paper and cement applied according to the artist's design. In manufacture they are ladled from small pots while in the molten state, placed on a slab or table, rolled, and when cool cut to size by a machine adapted to that purpose.

During the trial the following question was propounded:

Q. After these mosaics are made into the design which is desired to produce some representation, are they then ground or smoothed off?

To which the witness replied:

A. No; we have got to grind them before. If it is going to be a smooth surface, it has got to be ground before on an emery. If that is going to a distance which you want to have coloring, you leave it as it is, only you have got to cut the shapes to bring it to a design.

The witness further stated that different kinds of glass are used in the making of these articles. The cutting and grinding is for the purpose of getting the desired result in making the design. If they are placed in a design some distance from the eye, grinding would not be necessary, but cutting and fitting would be, to give the desired effect.

From this statement of facts, and it is admitted the official sample is representative of the merchandise, the question arises, Should the merchandise be classified under paragraph 98 as articles of every description composed wholly or in chief value of glass, ornamented or decorated in any manner, or cut, engraved, painted, decorated, ornamented, colored, stained, silvered, gilded, etched, sand blasted, frosted, or printed in any manner, or under paragraph 109 of the same act as "glass or manufactures of glass or paste, or of which glass or paste is the component material of chief value"?

In arriving at a proper classification of the merchandise we must consider the *eo nomine* description of the statute. It must be admitted that glass in either event is the component material. The controversy hinges on the meaning of the word "article" as described in paragraph 98.

The Government seriously contends that the merchandise should be classified under paragraph 98 as "all articles of every description composed wholly or in chief value of glass" and not as a manufacture of glass under paragraph 109.

The authorities and the statute are not clear as to what is the true meaning of the term "articles of glass," but it seems to us that paragraph 98 has reference entirely to glassware as distinguished from a manufacture of glass. The paragraph itself in describing the articles covered thereby is referring always to "glass bottles, decanters, and all articles * * * composed wholly or in chief value of glass, ornamented or decorated in any manner, * * * and all articles of every description, including bottles and bottle glassware, composed wholly or in chief value of glass blown either in a mold or otherwise, * * * not specially provided for." The logical sequence must be that the word "articles" refers to the class of glass first designated by the paragraph, namely, glass bottles or decanters. It certainly could not mean merchandise similar to that in dispute, which from its appearance has lost all the characteristics of glass, and yet is in fact composed in chief value of glass.

The authorities cited by the Government do not sustain the principle suggested. The board has previously held this class of merchandise manufactures of glass.

In G. A. 5576 (T. D. 24991) the merchandise consisted of glass cubes or mosaics, some colored and others gilded, none containing more than a single color, and designed for use in the construction of church altars. It was held dutiable by the board at 45 per cent ad valorem under paragraph 112 of the act of 1897 as a manufacture of glass, which paragraph is quite similar to paragraph 109 of the statute of 1909.

We are quite content to follow the holding in that cause, especially as it was announced prior to the enactment of the statute of 1909, and paragraph 98 of that act being similar to the one construed by the board therein.

The protests are sustained and the action of the collector reversed.

No. 86587.—Nail Polishers—Pyroxylin Articles.—Protest 562156-40249 of Marshall Field & Co. (Chicago). Opinion by Sullivan, G. A.

Nail polishers composed of celluloid, leather, cotton, and metal, classified as manufactures of celluloid under paragraph 17, tariff act of 1909, were claimed dutiable as brushes (par. 423). Protest overruled.

No. 86588.—Diamantine—Pyroxylin Articles.—Protest 626159 of Franz Euler & Co. (New York). Opinion by Sullivan, G. A.

Diamantine used for wrapping candy boxes, classified as a manufacture of pyroxylin by similitude under paragraph 17, tariff act of 1909, was held dutiable as a nonenumerated manufactured article (par. 480).

No. 86589.—Jewelry—Manufactures of Paste and Metal.—Protests 727503, etc., of Henry Bendel et al. (New York), and protests 604821, etc., of Borelli & Vitelli et al. (New York and Kansas City). Opinions by Sullivan, G. A.

Cohn *v.* United States (4 Ct. Cust. Appls., 378; T. D. 33536) followed as to articles commonly or commercially known as jewelry, held dutiable under paragraph 448, tariff act of 1909. United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506) and G. A. 7129 (T. D. 31089) followed as to articles in chief value of paste or metal.

No. 86590.—Toy Jewelry.—Protests 633402, etc., of H. Buss & Co. (New York). Opinion by Sullivan, G. A.

Bracelets and brooches classified under paragraph 438, tariff act of 1909, were claimed dutiable as toys (par. 431). Protests overruled. United States *v.* Bernard (5 Ct. Cust. Appls., —; T. D. 34328) followed.

No. 86591.—Pyroxylin Picture Frames.—Protests 635538, etc., of Saks & Co., et al. (New York). Opinion by Sullivan, G. A.

Picture frames composed in chief value of celluloid were held properly classified under paragraph 17, tariff act of 1909, rather than as manufactures of paper (par. 420), as claimed.

No. 86592.—Bicycle Handle Grips—Pyroxylin Articles.—Protests 692734-44200, etc., of Mead Cycle Co. (Chicago). Opinion by Sullivan, G. A.

Bicycle handle grips classified as manufactures of pyroxylin under paragraph 17, tariff act of 1909, were claimed dutiable as finished parts of bicycles (par. 141) Protests overruled. Abstract 34996 (T. D. 34279) followed.

No. 86593.—Protests Overruled.—Protest 733696-47392 of Wells, Fargo & Co. (Chicago) and protest 713976 of Strobel & Wilken Co. (Philadelphia). Opinions by Sullivan, G. A.

Protests unsupported; overruled.

No. 86594.—Protests Abandoned.—Protests 405177, etc., of Wm. Reichert & Co. et al. (New York).

Protests abandoned.

Before Board 2, September 24, 1914.

No. 86595.—Vessels' Equipment—Regulations.—Protest 696130 of the Detroit Shipbuilding Co. (Detroit). Opinion by Fischer, G. A.

An organ whistle classified as a manufacture of metal under paragraph 199, tariff act of 1909, was claimed entitled to free entry under section 5 of the Panama Canal act (T. D. 32956). The Treasury regulations not having been complied with, protest overruled.

No. 36596.—PRINTING PAPER.—Protest 760781 of Walther & Co. (New York). Opinion by Fischer, G. A.

Printing paper classified under paragraph 322, tariff act of 1913, was held entitled to free entry under paragraph 567. Abstract 36217 (T. D. 34677) followed.

No. 36597.—PROTESTS OVERRULED.—Protests 616125, etc., of Frank & Lambert et al. (New York). Opinion by Cooper, G. A.

Protests unsupported; overruled.

No. 36598.—PROTESTS ABANDONED.—Protests 450266-34757, etc., of J. G. Braun et al. (Chicago).

Protests abandoned.

BEFORE BOARD 3, SEPTEMBER 24, 1914.

No. 36599.—ARTISTIC ANTIQUITIES.—Protests 726076-45152, etc., of Bernard, Judae & Co. et al. (Chicago). Opinion by Waite, G. A.

Certain merchandise was held entitled to free entry as artistic antiquities under paragraph 717, tariff act of 1909. Protests sustained in part.

No. 36600.—COVERINGS OF LIQUIDS AND SEMILIQUIDS.—Protests 274229, etc., of Aguimbau & Ramee et al., protest 368053 of Eimer & Amend, and protests 267323, etc., of Merck & Co. (New York). Opinions by Somerville, G. A.

United States *v.* Peabody (3 Ct. Cust. Appls., 130; T. D. 32383) followed as to coverings of liquids and semiliquids.

No. 36601.—WOOD PULP—CANADIAN RECIPROCITY.—Protests 585326, etc., of Felix Salomon & Co. et al. (Boston et al.). Opinion by Somerville, G. A.

American Express Co. *v.* United States (4 Ct. Cust. Appls., 146; T. D. 33434) followed as to wood pulp and paper.

No. 36602.—GROUND WASTE RUBBER.—Protest 696038 of G. W. Sheldon & Co. (New York). Opinion by Somerville, G. A.

Ground old rubber used as an ingredient in the manufacture of rubber articles, classified as waste under paragraph 479, tariff act of 1909, was claimed entitled to free entry as scrap or refuse rubber (par. 591). Protests sustained. G. A. 6652 (T. D. 28360) and Magee *v.* United States (4 Ct. Cust. Appls., 443; T. D. 33874) followed.

No. 36603.—SUGAR TARE.—Protest 698123-4526 of American Sugar Refining Co. (New Orleans). Opinion by Somerville, G. A.

Protest sustained claiming that an insufficient allowance for tare was made in an importation of sugar. Abstract 24706 (T. D. 31255) and American Sugar Refining Co. *v.* United States (3 Ct. Cust. Appls., 69; T. D. 32352) followed.

No. 36604.—PROTESTS OVERRULED.—Protests 610724, etc., of Charles H. Wood (Boston), and protests 720311-4610, etc., of W. F. Klumpp & Co. et al. (New Orleans). Opinions by Somerville, G. A.

Protests unsupported; overruled.

No. 36605.—SCRAP LEATHER—LEATHER DUST—FERTILIZER.—Protests 694600, etc., and 702693, etc., of T. W. Saunders et al. (Buffalo et al.).

HAY, *General Appraiser:* * * * The merchandise in these cases is invoiced as scrap leather, leather dust, and hide shavings, assessed by the collector at 10 per cent under paragraph 479 of the tariff act of 1909 and claimed to be free of duty under paragraph 581 as "all substances used only for manure."

Paragraph 479, under which this merchandise was assessed, reads:

479. Waste, not specially provided for in this section, ten per centum ad valorem.

Paragraph 581, under which it is claimed by the importers that the merchandise is free of duty, reads:

581. Guano, manures, and all substances used only for manure, including basic slag, ground or unground, and calcium cyanamid or lime nitrogen.

So far as this board is concerned, such legal questions as arise out of the facts of these cases were settled in H. J. Baker & Bro.'s case, G. A. 7257 (T. D. 31800) and the authorities reviewed therein. There it was held that the words "manure" and "fertilizer" were practically synonymous and had been so treated in the tariff law, and that the words "used only for manure" covered, besides commodities used directly in the enrichment of the soil, those used in the manufacture of fertilizer, provided they are used only for that purpose. Following a clear line of authorities it was also held that the word "substances" as used in this paragraph of the law is general in its application and that the test is not whether this particular importation is used only for manure, but whether this commodity is commonly, practically, and profitably used for other purposes.

The burden was upon the importers under this rule to show that the scrap leather in question was used for no other purposes than manure, or that it is not commonly, practically, and profitably used for other purposes than manure or the manufacture of fertilizer. This, we think, is not shown by a preponderance of the testimony. The protests are therefore overruled as to scrap leather. * * *

The protests in so far as they relate to leather dust are sustained, and the collector directed to reliquidate the entries accordingly.

No. 36606.—Wood Pulp and Paper—Canadian Reciprocity.—Protest 711645 of Walther & Co. (New York). Opinion by Hay, G. A.

American Express Co. *v.* United States (4 Ct. Cust. Appls., 146; T. D. 33434) followed as to wood pulp and paper imported from Germany.

No. 36607.—Protests Overruled.—Protests 535464, etc., of Davies, Turner & Co. et al. (New York). Opinion by Hay, G. A.

Protests unsupported; overruled.

No. 36608.—Coverings of Liquids and Semiliquids.—Protest 427516 of Kwong Yuen Shing (New York). Opinion by Hay, G. A.

United States *v.* Peabody (3 Ct. Cust. Appls., 130; T. D. 32383) followed as to coverings of liquids and semiliquids.

Decisions on Applications for Rehearings.

No. 36609.—Rehearing Granted—Fish in Tins.—Application by the Government for rehearing in protests 520767–38628, etc., of C. L. Benson et al. (Chicago), Abstract 36048 (T. D. 34609). No. 783. Before Board 1, September 2, 1914.

No. 36610.—Rehearing Granted—Wool Articles Imported Between October 3, 1913, and January 1, 1914.—Application by the protestants for rehearing in protest 740167 of Jas. McCutcheon & Co. (New York), Abstract 36070 (T. D. 34629). No. 785. Before Board 1, September 2, 1914.

No. 36611.—Rehearing Granted—Wire Staples.—Application by the Government for rehearing in protests 731339, etc., of B. F. Goodrich Co. (Cleveland), Abstract 36124 (T. D. 34652). No. 786. Before Board 2, September 14, 1914.

No. 36612.—REHEARING GRANTED—NOVELTY SIDING—BEADED LUMBER.—Application by the Government for rehearing in protests 732915, etc., of F. W. Myers & Co. et al. (Ogdensburg et al.), Abstract 36067 (T. D. 34629). No. 787. Before Board 1, September 2, 1914.

No. 36613.—REHEARING DENIED.—Application by the protestants for rehearing in protest 723584 of the Produce Distributors Co. (Seattle), Abstract 36251 (T. D. 34698). No. 789. Before Board 3, September 19, 1914.

No. 36614.—REHEARING DENIED.—Application by the protestants for rehearing in protest 732326 of the Cunard Steamship Co. (Boston), Abstract 36125 (T. D. 34652). No. 790. Before Board 2, September 14, 1914.

No. 36615.—REHEARING DENIED.—Application by the protestants for rehearing in protests 684472, etc., of Eimer & Amend (New York), Abstract 36232 (T. D. 34677). No. 793. Before Board 1, September 11, 1914.

No. 36616.—REHEARING DENIED.—Application by the protestants for rehearing in protests 695316, etc., of M. Furuya & Co. et al. (Port Townsend), Abstract 36192 (T. D. 34668). No. 794. Before Board 3, September 19, 1914.

No. 36617.—REHEARING GRANTED—BEAN CAKE.—Application by the protestants for rehearing in protest 698407 of Okada & Ichida Co. (San Francisco), Abstract 36283 (T. D. 34704). No. 795. Before Board 3, September 19, 1914.

No. 36618.—REHEARING GRANTED—HATPIN TOPS.—Application by the Government for rehearing in protest 579768 of Samstag & Hilder Bros. (New York), Abstract 36411 (T. D. 34756). No. 796. Before Board 1, September 19, 1914.

No. 36619.—REHEARING GRANTED—CLERICAL ERROR.—Application by the protestants for rehearing in protests 710789, etc., of Hawley & Letzerich (Galveston), Abstract 35890 (T. D. 34571). No. 797. Before Board 3, September 19, 1914.

(T. D. 34790.)

Drawback on photographic paper.

Drawback on photographic paper manufactured by the Rochester Photo Works (Inc.) of Rochester, N. Y., with the use of imported paper and gelatin.

TREASURY DEPARTMENT, *September 28, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on photographic paper manufactured by the Rochester Photo Works (Inc.), of Rochester, N. Y., with the use of imported paper and gelatin.

A manufacturing record shall be kept, which will show, in addition to the usual import data, the lot number and date of manufacture of each lot of photographic paper manufactured for exportation with benefit of drawback, the serial number of each emulsion used, the quantity of the imported gelatin appearing therein, and the number of square feet of photographic paper of each kind coated therefrom.

A sworn abstract from such manufacturing record shall be filed with each drawback entry.

The allowance shall not exceed the quantity of imported paper and gelatin appearing in the exported photographic paper, as shown by the sworn abstract from the manufacturing record.

The sworn statement of the manufacturers, dated September 4, 1914, is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(102585.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Buffalo, N. Y.*

(T. D. 34791.)

Drawback on candies.

T. D. 30357 of February 11, 1910, extended to cover candies manufactured by the Package Confectionery Co., successors to the National Wafer Co., of Boston, Mass.

TREASURY DEPARTMENT, *September 28, 1914.*

SIR: The department's regulations of February 11, 1910 (T. D. 30351), providing for the payment of drawback on lozenges and wafers manufactured by the National Wafer Co., of Boston, Mass., in part from imported sugar, are hereby extended to cover such candies manufactured by the Package Confectionery Co., of Boston, Mass., successors to the National Wafer Co.

The said Treasury decision is also extended to cover the candies specified in the sworn statements of the Package Confectionery Co., dated April 17 and September 8, 1914, which are transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(72595.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 34792.)

Drawback on beds, cribs, etc.

Drawback on iron bedsteads, cribs, combination and 3-piece bedsteads, hospital and institution beds manufactured by the Simmons Manufacturing Co., of Kenosha, Wis., with the use of imported iron tubing.

TREASURY DEPARTMENT, *September 29, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on iron bedsteads, cribs, combination and 3-piece bedsteads, hospital beds, and institution beds manufac-

tured by the Simmons Manufacturing Co., of Kenosha, Wis., in part from imported iron tubing.

A manufacturing record shall be kept, which will show, in addition to the usual data, the lot number and date of manufacture of each lot of articles manufactured for exportation with benefit of drawback, the dimensions, weight, and value of imported iron tubing used in the manufacture thereof, the number of articles of each size, kind, and style produced, and the quantity and value of the waste incurred. A sworn abstract from such manufacturing record shall be filed with each drawback entry.

The allowance shall not exceed the quantity of imported iron tubing used in the manufacture of the exported articles, as shown by the sworn abstract from the manufacturing record, the allowance to be reduced according to the quantity of imported material which the value of the waste will replace.

The sworn statement of the manufacturers, dated August 27, 1914, is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(102565.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Milwaukee, Wis.*

(T. D. 34793.)

Pine cones.

Appeal directed from decision of the Board of United States General Appraisers of August 4, 1914, Abstract 36255 (T. D. 34698), involving the classification of pine cones.

TREASURY DEPARTMENT, *September 29, 1914.*

SIR: I have to acknowledge the receipt of your letter of the 24th instant, inviting attention to the decision of the Board of United States General Appraisers, Abstract 36255 (T. D. 34698), involving the classification of pine cones, wherein it was held that duty should have been assessed on the weight of the nuts alone, rather than on the combined weight of the cones and nuts.

In view of the importance of the issue, you are hereby requested to file, in the name of the Secretary of the Treasury, an application to the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, ANDREW J. PETERS,
(53023.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 34794.)

Drawback on milk chocolates.

T. D. 33943 amended with respect to the allowance for imported almonds used in the manufacture of almond milk chocolate.

TREASURY DEPARTMENT, *September 29, 1914.*

SIR: The department's regulations of December 2, 1913 (T. D. 33943), providing for the payment of drawback on milk chocolates manufactured for the account of Lamont, Corliss & Co., of New York, N. Y., by the Peter Cailler Kohler Swiss Chocolate Co. (Inc.), of Fulton, N. Y., are hereby amended to provide that in the case of almond milk chocolate the allowance shall not exceed 20 per cent of imported almonds, instead of 25 per cent, as shown by the sworn statement of the said company, dated November 18, 1913, which is now on file in your office.

The sworn statement of Lamont, Corliss & Co., dated September 4, 1914, is transmitted herewith.

Supplemental sworn statements showing changes in the quantities of imported materials appearing in milk chocolates covered by T. D. 33943 may be filed, and upon verification of such statements drawback may be allowed in accordance therewith.

Respectfully, ANDREW J. PETERS,
(100240.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34795.)

Drawback on mercurial preparations.

Drawback on mercurial preparations manufactured by the Mallinckrodt Chemical Works, of St. Louis, Mo., at their Jersey City, N. J., plant, with the use of imported metal quicksilver.

TREASURY DEPARTMENT, *September 29, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on mercurial preparations designated as corrosive sublimate, calomel, red and yellow oxide of mercury, and ammoniated mercury or white precipitate, manufactured by the Mallinckrodt Chemical Works, of St. Louis, Mo., at their Jersey City, N. J., plant, with the use of imported metal mercury (quicksilver).

The allowance shall not exceed the quantity of imported mercury appearing in the exported preparations, as shown by the sworn state-

ment of the manufacturers, dated September 5, 1914, which is transmitted herewith for filling in your office.

Respectfully, ANDREW J. PETERS,
(99458.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34796.)

Drawback on automobile hoods.

Drawback on aluminum automobile hoods manufactured by the Michigan Stamping Co., of Detroit, Mich., from imported sheet aluminum.

TREASURY DEPARTMENT, *September 30, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on aluminum automobile hoods manufactured by the Michigan Stamping Co., of Detroit, Mich., with the use of imported sheet aluminum, for the account of the Ford Motor Co., of Detroit, Mich.

The allowance shall not exceed the quantity of imported sheet aluminum used in the manufacture of the exported aluminum automobile hoods, as shown by the sworn statement of the manufacturers, dated August 19, 1914, transmitted herewith, the allowance to be reduced according to the quantity of the imported aluminum sheets which the value of the waste will replace.

T. D. 34294 of March 19, 1914, providing for the payment of drawback on automobiles manufactured by the Ford Motor Co. with the use of aluminum hoods manufactured by the Michigan Stamping Co., is hereby amended to provide for the allowance authorized herein on automobiles exported on or after May 18, 1914.

Supplemental sworn statements and schedules covering other aluminum automobile hoods manufactured by the Michigan Stamping Co. from imported sheet aluminum may be filed and drawback on such hoods may be allowed, subject to verification of the supplemental statements or schedules and approval by the department.

Respectfully, ANDREW J. PETERS,
(98408.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Detroit, Mich.*

(T. D. 34797.)

Drawback on automobile tops.

Drawback on automobile tops manufactured by the American Top Co. with the use of various imported materials.

TREASURY DEPARTMENT, *September 30, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations

(T. D. 31695 of June 16, 1911), on automobile tops designated as No. 131 Chandler tops, 135 Chandler tops, 139 Briscoe tops, 143 King tops, 146 King tops, and 150 Briggs-Detroiter tops manufactured by the American Top Co., of Jackson, Mich., with the use of imported mohair cloth, imitation mohair cloth, jute webbing, buckram, and celluloid sheets.

The allowance shall not exceed the quantities of imported materials appearing in the exported automobile tops, as shown by the sworn statement of the manufacturers, dated August 24, 1914, which is transmitted herewith for filing in your office.

Supplemental sworn statements and schedules covering other automobile tops may be filed, and upon verification thereof and approval by the department drawback may be allowed on the automobile tops described therein.

Respectfully, ANDREW J. PETERS,
(102667.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Detroit, Mich.*

(T. D. 34798.)

Drawback on glue.

Drawback on ground glue manufactured by F. W. Tunnell & Co. (Inc.), of Philadelphia, Pa., with the use of imported sheet glue.

TREASURY DEPARTMENT, *September 30, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on ground glue produced by F. W. Tunnell & Co. (Inc.), of Philadelphia, Pa., either with the use of wholly imported sheet glue and domestic materials or with the use of imported sheet glue in combination with domestic glue and other materials.

A manufacturing record shall be kept, which will show, in addition to the usual import data, the lot number and date of manufacture of each lot of ground glue produced for exportation with benefit of drawback, the quantity of ground glue produced, and the quantity of imported glue of each grade, and the quantity of domestic glue and other materials appearing therein. A sworn abstract from such manufacturing record shall be filed with each drawback entry.

The allowance shall not exceed the quantity of imported sheet glue appearing in the exported ground glue, as shown by the sworn abstract from the manufacturing record.

The sworn statement of the manufacturers, dated September 17, 1914, is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(102567.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Philadelphia, Pa.*

(T. D. 34799.)

Values of foreign coins.

[Circular No. 1.]

TREASURY DEPARTMENT, *October 1, 1914.*

In pursuance of the provisions of section 25 of the act of August 27, 1894, I hereby proclaim the following estimate by the Director of the Mint of the values of foreign coins to be the values of such coins in terms of the money of account of the United States, to be followed in estimating the value of all foreign merchandise exported to the United States during the quarter beginning October 1, 1914, expressed in any such metallic currencies.

Entries of merchandise liquidated upon the values proclaimed herein will be subject to reliquidation upon the order of the Secretary of the Treasury whenever satisfactory evidence shall be produced to him showing that the values in United States currency of the foreign money specified in the invoices were at the date of certification at least 10 per cent more or less than the values herein proclaimed.

W. G. MCADOO, *Secretary.*

Estimate by Director of the Mint of the values of foreign coins.

Country.	Legal standard.	Monetary unit.	Value in terms of United States money.	Remarks.[1]
Argentine Republic	Gold	Peso	$0.965	Currency: Depreciated paper, convertible at 44 per cent of face value.
Austria-Hungary	do	Crown	.203	
Belgium	Gold and silver	Franc	.193	Member of Latin Union; gold is the actual standard.
Bolivia	Gold	Boliviano	.389	12½ bolivianos=1 pound sterling.
Brazil	do	Milreis	.546	Currency: Government paper; exchange rate, about 25 cents to the milreis.
British colonies in Australasia and Africa.	do	Pound sterling	4.8665	
Canada	do	Dollar	1.000	
Central American States:				
Costa Rica	do	Colon	.465	
British Honduras	do	Dollar	1.000	
Nicaragua	do	Cordova	1.000	
Guatemala, Honduras, Salvador	Silver	Peso	.398	Guatemala: Currency, inconvertible paper, exchange rate 16 to 18 pesos=$1. Honduras: Currency, bank notes. Salvador: Currency, convertible into silver on demand.
Chile	Gold	do	.365	Currency: Inconvertible paper; exchange rate, approximately, $0.14

[1] The exchange rates shown under this heading are recent quotations and given as an indication of the values of currencies which are fluctuating in their relation to the legal standard. They are not to take the place of the consular certificate where it is available. Exchange rates since Aug. 1 have had violent fluctuations.

Estimate by Director of the Mint of the values of foreign coins—Continued.

Country.	Legal standard.	Monetary unit.	Value in terms of United States money.	Remarks.
China	Silver	Tael: Amoy	$0.652	
		Canton	.650	
		Chefoo	.624	
		Chin Kiang	.637	
		Fuchau	.608	
		Haikwan (customs)	.664	
		Hankow	.610	
		Kiaochow	.632	
		Nanking	.646	
		Niuchwang	.612	
		Ningpo	.627	
		Peking	.636	
		Shanghai	.596	
		Swatow	.603	
		Takau	.657	
		Tientsin	.632	
		Dollar: Yuan	.475	
		Hongkong	.429	
		British	.429	
		Mexican	.432	
Colombia	Gold	Dollar	1.000	Currency: Inconvertible paper; exchange rate, approximately, $102 paper to $1 gold.
Denmark	do	Crown	.268	
Ecuador	do	Sucre	.487	
Egypt	do	Pound (100 piasters).	4.943	The actual standard is the British pound sterling, which is legal tender for 97½ piasters.
Finland	do	Mark	.193	
France	Gold and silver	Franc	.193	Member of Latin Union; gold is the actual standard.
German Empire	Gold	Mark	.238	
Great Britain	do	Pound sterling	4.8665	
Greece	Gold and silver	Drachma	.193	Do.
Haiti	Gold	Gourde	.965	Currency: Inconvertible paper; exchange rate, approximately, $0.2941.
India (British)	do	Rupee	.324	15 rupees=1 pound sterling.
Italy	Gold and silver	Lira	.193	Member of Latin Union; gold is the actual standard.
Japan	Gold	Yen	.498	
Liberia	do	Dollar	1.000	Currency: Depreciated silver token coins. Customs duties are collected in gold.
Mexico	do	Peso	.498	Mexican exchange rate fluctuating and uncertain.
Netherlands	do	Florin	.402	
Newfoundland	do	Dollar	1.014	
Norway	do	Crown	.268	
Panama	do	Balboa	1.000	
Paraguay	Silver	Peso	.398	Currency: Depreciated paper; exchange rate, 1,550 per cent.
Persia	Gold and silver	Kran	.170	This is the value of the gold kran. Currency is silver circulating above its metallic value; exchange value of silver kran, approximately, $0.0875.
Peru	Gold	Libra	4.8665	
Philippine Islands	do	Peso	.500	
Portugal	do	Escudo	1.080	Currency: Inconvertible paper; exchange rate, approximately, $0.9394.
Roumania	do	Leu	.193	
Russia	do	Ruble	.515	
Santo Domingo	do	Dollar	1.000	
Servia	do	Dinar	.193	
Siam	do	Tical	.371	
Spain	Gold and silver	Peseta	.193	Valuation is for the gold peseta; currency is silver circulating above its metallic value; exchange value, approximately, $0.1794.
Straits Settlements	Gold	Dollar	.567	
Sweden	do	Crown	.268	
Switzerland	do	Franc	.193	Member of Latin Union; gold is the actual standard.
Turkey	do	Piaster	.044	100 piasters equal to the Turkish £.
Uruguay	do	Peso	1.034	
Venezuela	do	Bolivar	.193	

(T. D. 34800.)

Drawback on pianos.

Drawback on pianos manufactured by the Jesse French & Sons Piano Co., of New Castle, Ind., with the use of various imported materials and parts.

TREASURY DEPARTMENT, *October 1, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on upright pianos manufactured by the Jesse French & Sons Piano Co., of New Castle, Ind., with the use of imported tuning pins, ivories, stringing wire, and bushing cloth, and on grand pianos manufactured by the said company with the use of imported complete piano actions.

The allowance shall not exceed the quantities of imported materials and the number of imported parts used in the manufacture of the exported pianos, as shown by the sworn statement of the manufacturers, dated September 16, 1914, which is transmitted herewith, the allowance for imported bushing cloth to be reduced according to the quantity of imported bushing cloth which the value of the waste will replace.

Respectfully, ANDREW J. PETERS,
(102742.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Indianapolis, Ind.*

(T. D. 34801.)

Drawback on automobile axles.

Drawback on automobile axles manufactured by the American Ball Bearing Co., of Cleveland, Ohio, with the use of imported ball bearings.

TREASURY DEPARTMENT, *October 2, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on automobile axles manufactured by the American Ball Bearing Co., of Cleveland, Ohio, with the use of imported ball bearings for the account of the Lozier Motor Co., of Detroit, Mich.

The allowance shall not exceed the number of imported ball bearings appearing in the exported axles, as shown by the sworn statement of the manufacturers, dated August 19, 1914, which is transmitted herewith for filing in your office.

Supplementary sworn statements and schedules may be filed covering other automobile axles manufactured by the American Ball Bearing Co. with the use of imported ball bearings, and upon verification of such statements and schedules drawback may be allowed on the automobile axles described therein.

Respectfully, ANDREW J. PETERS,
(101006-14.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Detroit, Mich.*

(T. D. 34802.)

Drawback on automobiles and automobile parts.

Drawback on automobiles and automobile parts manufactured by the Abbott Motor Car Co., of Detroit, Mich., with the use of various imported materials and parts.

TREASURY DEPARTMENT, *October 2, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the general drawback regulations (T. D. 31695 of June 16, 1911), on automobiles and automobile parts manufactured by the Abbott Motor Car Co., of Detroit, Mich., in whole or in part with the use of imported materials and parts, and with the use of parts produced by domestic manufacturers in whole or in part from imported materials or parts, and covered by drawback rates now existing or which shall be promulgated in the future, under the conditions set forth in the sworn statements of the said company dated January 23, 1911 (filed in connection with T. D. 31337 of Feb. 27, 1911), April 16, 1913 (filed in connection with T. D. 33443 of May 21, 1913), and August 25, 1914, transmitted herewith, and sworn statements filed by the domestic manufacturers in connection with drawback rates separately established.

The allowance shall not exceed the quantities of imported materials used in the manufacture of the exported automobiles or parts, as shown by the aforesaid sworn statements of the Abbott Motor Car Co. or provided for by the drawback rates separately established covering parts supplied to the Abbott Motor Car Co., the said allowance to be reduced by the quantity of imported material which the value of the waste will replace.

Supplementary sworn statements and schedules may be filed modifying the originals or showing the use of other imported parts, materials, or parts made from imported materials, new models of automobiles or parts manufactured for exportation, changes in quantities or values of imported materials or parts, or wastes incurred, etc. Such supplementary statements and schedules shall be referred to the special agents for investigation and their report, together with the statements and schedules submitted to the department for approval prior to the liquidation of entries referring thereto.

T. D. 31337 of February 27, 1911, and T. D. 33443 of May 21, 1913, are hereby revoked.

Respectfully, ANDREW J. PETERS,
(101006–12.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Detroit, Mich.*

(T. D. 34803.)

Drawback on automobile wind shields.

Drawback on automobile wind shields manufactured by the Universal Wind Shield Co., of Chicago, Ill., with the use of imported glass.

TREASURY DEPARTMENT, *October 2, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on automobile wind shields manufactured by the Universal Wind Shield Co., of Chicago, Ill., with the use of imported glass, for the account of the Lozier Motor Co., of Detroit, Mich.

The allowance shall not exceed the quantity of imported glass appearing in the exported wind shields, as shown by the sworn statement of the manufacturers, dated June 14, 1914, which is transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on wind shields exported on or after June 25, 1914.

Supplementary sworn statements and schedules covering automobile wind shields manufactured by the Universal Wind Shield Co. with the use of imported glass may be filed. However, such statements and schedules shall be verified by the special agent and approved by the department prior to liquidation of entries referring thereto.

Respectfully, ANDREW J. PETERS,
(101006-15.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Detroit, Mich.*

(T. D. 34804.)

Passengers' baggage.

Customs officers forbidden to break locks on trunks in order to examine passengers' baggage.

TREASURY DEPARTMENT, *October 2, 1914.*

To collectors and other officers of the customs:

Complaints have been received by the department from passengers who state that the locks of their trunks have been broken open by customs officers for the purpose of examining baggage and that the contents of the trunks have been damaged in consequence of such action.

While investigations of these complaints have usually shown that the customs officers have not been in any way responsible for the breaking open of trunks, you are requested to warn customs officers who examine baggage that in no case should a trunk be opened by them for the purpose of examining the contents. Trunks should be opened only by the owner himself or by his agent. All baggage, the

keys for which are not produced by the owner or his agent, should be held for examination until the keys are produced or a request received from the owner or his agent to make other proper disposition of the baggage.

(102813.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 34805.)

Drawback on automobiles and automobile parts.

Drawback on automobiles and automobile parts manufactured by the Lozier Motor Co. with the use of various imported materials and parts.

TREASURY DEPARTMENT, *October 5, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on automobiles and automobile parts manufactured by the Lozier Motor Co., of Detroit, Mich., in whole or in part with the use of imported materials and parts, and with the use of parts produced by domestic manufacturers in whole or in part from imported materials and covered by drawback rates now existing or which shall be promulgated in the future, under the conditions set forth in the sworn statement of the said company dated August 21, 1914, transmitted herewith, and the sworn statements filed by the domestic manufacturers in connection with drawback rates separately established.

The allowance shall not exceed the quantities of imported materials and the number of imported parts used in the manufacture of the exported automobiles or parts, as shown by the aforesaid sworn statement of the Lozier Motor Co., the said allowance to be reduced by the quantity of imported materials which the value of the waste will replace.

Supplementary sworn statements and schedules may be filed modifying the originals or showing the use of other imported parts, materials, or parts made from imported materials, new models of automobiles or parts manufactured for exportation, changes in quantities or values of the imported materials or parts, and waste incurred, etc. Such supplementary statements and schedules shall be referred to the special agents for verification, and their reports, together with the statements and schedules submitted to the department for approval prior to the liquidation of entries referring thereto.

T. D. 34465 of May 25, 1914, and all other Treasury decisions providing for the payment of drawback on automobiles and parts of automobiles manufactured by the Lozier Motor Co. are hereby revoked.

Respectfully, ANDREW J. PETERS,
(59874.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Detroit, Mich.*

(T. D. 34806.)

Reduction of entered value.

Method to be followed in making certificate on entry of merchandise and making application for reduction of the entered value under the provision in the last part of paragraph I, section 3, of the tariff act of October 3, 1913.

TREASURY DEPARTMENT, *October 5, 1914.*

To collectors of customs and others concerned:

The last part of paragraph I of section 3 of the tariff act of October 3, 1913, is as follows:

The duty shall not, however, be assessed in any case upon an amount less than the entered value, unless by direction of the Secretary of the Treasury in cases in which the importer certifies at the time of entry that the entered value is higher than the foreign market value and that the goods are so entered in order to meet advances by the appraiser in similar cases then pending on appeal for reappraisement, and the importer's contention shall subsequently be sustained by a final decision on reappraisement, and it shall appear that the action of the importer on entry was taken in good faith, after due diligence and inquiry on his part, and the Secretary of the Treasury shall accompany his directions with a statement of his conclusions and his reasons therefor.

The certificates of importers under this provision have in many instances not been in accordance with the said provision of law, and in many others it has been impossible to determine what was the importer's contention. Further, in many cases due diligence and inquiry on the part of the importer has not been shown.

In order that there may be a greater uniformity and compliance with the law in cases of this character, an importer making addition on entry under the above provision should make his certificate at the time of entry in substantially the following form:

I hereby certify that the entered value of the merchandise mentioned below is higher than the foreign market value and that the goods are so entered in order to meet advances by the appraiser in similar cases now pending on appeal for reappraisement. The similar cases now pending are entries Nos. ———, at the port of ———.

I contend that duty should be assessed on the basis of the value shown below as the foreign market value.

Items.	Invoice value.	Add to make foreign market value.	Deduct to make foreign market value.	Foreign market value.	Add to meet advances by appraiser in similar cases.	Entered value.

———, *Importer.*

In making application to the department for a reduction of the entered value under the said provision of paragraph I, section 3, of the tariff act, the importer should state specifically the nature of the diligence exercised and the inquiry made on his part prior to making his advance on entry, and state from whom and what information was obtained as a result thereof. Such application should be submitted through the collector of customs at the port of entry, who will transmit the same to the department with a full report thereon.

A strict compliance with the above will facilitate action by the department on applications under the above provision of law.

(101237.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 34807—G. A. 7603.)

Belting leather—Sufficiency of protest.

1. Where a protestant bases his claim for classification other than that made by the collector upon a specific provision in a paragraph of the tariff act and names a rate of duty which should have been assessed, such a protest can not be made the basis for recovery under any other provision of the same paragraph naming a different rate of duty, even though it be conceded that the collector's assessment was erroneously made.

2. A claim that merchandise should have been classified under the provision in paragraph 451, tariff act of 1909, for "band, bend, or belting leather, rough leather and sole leather," and assessed with duty at the rate of 5 per cent ad valorem, is not sufficiently specific to point out to the collector that duty should have been assessed on the merchandise at the rate of 5 per cent as belting leather, with an addition of 10 per cent ad valorem under the proviso in said paragraph 451 for the reason that such leather is cut into forms ready to be made up into articles. *Held*, the protest is insufficient and not a compliance with the provisions of subsection 14 of section 28 of the tariff act of 1909.

3. Abstract 31884 (T. D. 33325), Michelin *v.* United States (5 Ct. Cust. Appls., —; T. D. 34131), G. A. 7549 (T. D. 34320), Bliven *v.* United States (1 Ct. Cust. Appls., 205; T. D. 31239), and Bowling Green Storage & Van Co. *v.* United States (3 Ct. Cust. Appls., 310; T. D. 32588) cited.

United States General Appraisers, New York, September 28, 1914.

In the matter of protests 604056, etc., of Michelin Tire Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (McCLELLAND, SULLIVAN, and BROWN, General Appraisers; BROWN, G. A., dissenting).

McCLELLAND, *General Appraiser:* There is no dispute as to the facts in this case. The question is wholly one of sufficiency of protest.

The merchandise is belting leather, and in harmony with the decision of the board in Abstract 31884 (T. D. 33325), affirmed in Michelin *v.* United States (5 Ct. Cust. Appls., —; T. D. 34131), it must be held to be dutiable at 5 per cent and 10 per cent ad valorem

under paragraph 451 of the tariff act of 1909, provided the protests are sufficiently specific to be in compliance with subsection 14 of section 28 of the tariff act of 1909.

The essential features of the protests read:

> We claim that the merchandise, the leather marked C. B. 271/4, upon which duty was imposed at the rate of 25 per cent, should have been admitted as band or belting leather and a duty of only 5 per cent ad valorem imposed in accordance with paragraph 451 of the tariff act of 1909, and more particularly in accordance with that part of the section which reads, "band, bend, or belting leather, rough leather, and sole leather, 5 per centum ad valorem."
>
> We further claim that said leather was entitled to entry under paragraph 451 of the said tariff act of 1909, especially when such paragraph is read in connection with paragraph 481 of the said tariff act, because said leather most resembles, of all the articles enumerated in the tariff act, leather specified in paragraph 451.

Under this clear and specific statement of objections to the rates of duty assessed and the equally clear and specific statement of the rate of duty which it is claimed should have been assessed, the Government contends that protestants are limited to the rate named, and that inasmuch as the correct rate is not named, the protests must be overruled.

In addition to the 5 per cent rate of duty assessable on the merchandise as belting leather under the first provision of paragraph 451, *supra*, it is chargeable with the additional rate of 10 per cent ad valorem under the *proviso* in said paragraph, for the reason that the leather is cut into forms and ready to be made up into articles. This proviso reads:

> *Provided*, That leather cut into shoe uppers or vamps or other forms, suitable for conversion into manufactured articles, and gauffre leather, shall pay a duty of 10 per centum ad valorem in addition to the duty imposed by this paragraph on leather of the same character as that from which they are cut.

The Government urges that the assessments should stand, for the reason that the protests do not set forth distinctly and specifically, as required by subsection 14, *supra*, the grounds of objection to the collector's decisions.

In G. A. 7549 (T. D. 34320), passing upon the sufficiency of certain protests, we said:

> There is nothing in the statute that requires that protestants shall in every protest set forth the numbers of the paragraphs under which duty was assessed and under which claim is made, and yet, in some instances, in order to advise the collector as to the act complained of and the classification claimed, owing to the complexity of the law, it is absolutely necessary not only to name the paragraphs but to point to the particular provisions involved, as, for instance, when classification is made under paragraph 397 and claim made for a different classification under the same paragraph.

In the case at bar we think we have an instance where, in order to comply with the statute, it was necessary not only to name the paragraph but in addition to specify the particular provision or provisions of it relied upon and the rate or rates of duty claimed in order that

the collector might have his attention directed to the provision or provisions under which his classification should have been made and the rate or rates of duty that should have been assessed.

In Bliven *v.* United States (1 Ct. Cust. Appls., 205; T. D. 31239) the court said:

> The cardinal principle underlying the sufficiency of protests being that the protestant must direct the mind of the collector to the appropriate provision of law, it can not by any stretch of imagination be said that this requirement is satisfied when the protestant directs the mind of the collector to some other provision of law assessing a different rate of duty. Such is a more violent contravention of the requirement, because it not only does not leave the mind of the collector free to determine for himself the appropriate provision, but carries his mind away from the applicable clause to an inapplicable one and thus confuses the situation.

The protests now before us state the grounds of objection to the collector's assessments distinctly and specifically and if these are not sufficiently broad in scope and language to include the rates of duty which it is now admitted should originally have been assessed on the merchandise, protestants are not entitled to relief, even in the face of an admission that the collector's assessments were erroneous.

In Bowling Green Storage & Van Co. *v.* United States (3 Ct. Cust. Appls., 310; T. D. 32588), involving a question of construction of protest language, Presiding Judge Montgomery, writing for the court, said:

> It is said the protest not only claims on antiquities, but claims under paragraph 717, which would necessarily bring it within the 100-year clause. This would be entitled to much force had the protest rested there. But it proceeds to state with specificness the objection, assigning reasons, as is required, for the objections, and those reasons, as stated, are that the goods are admissible under paragraph 717 "as works of art and sculptures which have been in existence more than twenty years prior to the date of their importation, the production of professional sculptors in marble, stone, etc." This we think is a clear limitation upon the recital in the first part of the protest, and limits the importer to the 20-year clause of the paragraph.

If in that case the protestant was limited by the 20-year claim specified, we think it must follow that in this case the protestants are limited to the specific and sole claim set forth in their protests, viz, that for duty at the rate of 5 per cent ad valorem under the provision for "band, bend, or belting leather, rough leather and sole leather."

The only question presented to the collector by the filing of the protests was whether the duties assessed by him should stand or whether there should be a reliquidation at the 5 per cent rate claimed.

We hold the protests to be insufficient, and they are therefore overruled without affirming the collector's decisions.

DISSENTING OPINION.

BROWN, *General Appraiser:* I must respectfully dissent from the reasoning and conclusions of the majority opinion in this case for the following reasons:

The proviso at the end of paragraph 451 by its terms applies to and is part of the whole paragraph, exactly as if its language had been added separately to the end of each clause thereof. To determine its legal effect the clause in said paragraph must be read:

Band, bend, or belting leather, rough leather and sole leather, five per centum ad valorem: *Provided*, That leather cut into shoe uppers or vamps or other forms, suitable for conversion into manufactured articles, and gauffre leather, shall pay a duty of ten per centum ad valorem in addition to the duty imposed by this paragraph on leather of the same character as that from which they are cut.

This is apparent to any layman.

No collector would properly fulfill his duty in reading the paragraph to ascertain whether and to what purpose the correctness of his decision determining the classification had been challenged *without reading the proviso* at the end. His mind must be and necessarily is led straight to the terms of the proviso as soon as protest under any clause of paragraph 451 directs his attention to that paragraph.

The collector himself applied the proviso in making the classification of these goods at 25 per cent, *i. e.*, 15 per cent under the second clause of paragraph 451 as leather dressed and finished and 10 per cent additional as leather used in the manufacture of automobile tires, *cut into forms*.

His return based upon the appraiser's report so shows. His own statement, then, demonstrates that he had the proviso in his mind and, in fact, read it and applied it when he was in the act of making the liquidation and when he refused to change his classification after reading the protest.

It was hardly necessary for the importer to tell the collector to apply the proviso, which he had already done, when the protest distinctly indicates the correct clause to which to apply it.

A decision upon this protest upon the right classification as now finally settled by the United States Court of Customs Appeals in Michelin *v.* United States (5 Ct. Cust. Appls., —; T. D. 34131) would not change nor do away with the assessment of 10 per cent additional under the proviso, but would simply change the application of the proviso from the second clause of the paragraph to the first, making the proviso apply to the clause for belting leather, instead of to the next clause, for leather dressed and finished.

This illustrates the narrowness of the technical objection made to the sufficiency of this protest, and shows the hardship involved in denying to the importer all remedy in a case like this for a concededly erroneous classification.

This case is ruled by the language of Judge De Vries in G. A. 5613 (T. D. 25108) in construing paragraphs 307 and 313 of the act of July 24, 1897, paragraph 313 being in effect a proviso attached to paragraph 307.

Paragraph 307 is a countable cotton-cloth paragraph. Paragraph 313 is a proviso imposing additional duty on certain characters of goods as affecting all the preceding "cotton cloth, countable" provisions. Paragraph 313 reads as follows:

313. Cotton cloth in which other than the ordinary warp and filling threads have been introduced in the process of weaving to form a figure, whether known as lappets or otherwise, and whether unbleached, bleached, dyed, colored, stained, painted, or printed, shall pay, in addition to the duty herein provided for other cotton cloth of the same description, or condition, weight, and count of threads to the square inch, one cent per square yard if valued at not more than seven cents per square yard, and two cents per square yard if valued at more than seven cents per square yard.

The goods had been assessed in error under paragraph 391 of said act, and it was conceded (see advisory report of the appraiser) that they were properly dutiable at 40 per cent under paragraph 307, plus 2 cents per square yard under paragraph 313.

The protest reads as follows:

We claim that the said cotton goods are properly dutiable at *no higher than 40 per cent* as countable cottons under and by virtue of the provisions of *paragraph 307 or 308* of the act of July 24, 1897.

The collector in his report recited:

From the special report of the United States appraiser herewith, dated September 14, 1903, it appears that the goods in question * * * are properly dutiable at 40 per cent ad valorem under the provisions of paragraph 307, * * * and, in addition thereto, at 2 cents per square yard under the provisions of paragraph 313. * * * As the protestants, however, have failed to point out the proper paragraphs of the law under which duty should be assessed the assessment of duty as made is affirmed.

Judge De Vries, after reciting the rule "that the protest must be sufficient in language to bring to the mind of the collector the proper provision or provisions of law under which assessment of duty should be made upon the merchandise covered by the protest," says:

It would seem from the return of the collector in this case that this protest was sufficient to direct his mind to the proper provisions of the law; at least that he had the applicable provision in mind at the time he made his return, for he has recited in his return the correct provisions as those applicable. Moreover, the protest cites the proper rate, 40 per cent ad valorem and indicates the proper paragraph (paragraph 307) which is the applicable paragraph to this merchandise. Paragraph 313 in terms provides *an additional duty* to the rates and amounts of duty provided in the countable provisions of the cotton schedule. Whenever, therefore, the mind of the collector is directed to any particular paragraph of the countable schedule, he, being conclusively presumed to know the law, must be held to know that as a part of each of these paragraphs with reference to certain goods covered thereby must also be considered the language of paragraph 313; and that whenever any one of the countable provisions is invoked by a protest he must know, and is conclusively presumed to know as a matter of law, that the particular paragraph levying duty in a particular case *is not all the law upon that subject* and is not the entire provision applicable to goods coming under that paragraph, but that in certain cases, *which are to be determined by the merchandise before him*, there is an additional provision of law applicable which must be held to be a part of the particular or conjoint provisions with that paragraph.

We are of the opinion that with the protest before him claiming the correct rate of duty and citing the paragraph of the law applicable in the first instance, together with the merchandise containing the extra threads provided for in paragraph 313 likewise before him, there was presented to the collector such a citation of law and presentation of fact, which, together with the presumptive knowledge of the law deemed ever in his mind, must have indicated with certainty the applicable provisions of law relied upon by the importer.

This case is absolutely on all fours with the case at bar, except that it is stronger in this—that the clause levying the additional duty (313) as part of paragraph 307 was separately enumerated as a distinct paragraph, while here the proviso is contained in the paragraph itself. There, as here, the protest only noted the primary rate, 40 per cent (5 per cent in this case) and did not mention the additional duty of 2 cents per square yard (10 per cent in this case). And the mention of the primary rate in paragraph 307 was properly held to be notice of the additional duty also in the collector's mind when he had the merchandise before him.

The authority of Judge De Vries's finding is not weakened by the subsequent decisions of the board in G. A. 6588 (T. D. 28159) and G. A. 6472 (T. D. 27684). This is clearly pointed out by the concurring opinions of Judge De Vries himself in these cases, showing conclusively that a determination of the point here involved was not necessary to either of said decisions, the protests being bad, in his opinion, upon other grounds.

Moreover, the principle upon which G. A. 6588 and G. A. 6472 rested was overruled in Carter *v.* United States (1 Ct. Cust. Appls., 64; T. D. 31033), where a protest (see p. 65) was sustained "merely claiming the merchandise to be dutiable 'at the appropriate rate according to count of threads, weight, value, and condition as cotton cloth under paragraphs 304 to 310, inclusive,' and under paragraph 313," although it did not specify the particular clauses under which claim was made.

In addition, Judge Fischer in G. A. 6472 (T. D. 27684) distinguishes G. A. 5613 (T. D. 25108) because "that case was so decided for the reason that the *report made by the collector* showed that his mind has been directed to the proper provision," etc.

As the "report made by the collector" in the case at bar clearly shows "his mind has been directed to the proper provision," this explanatory language of Judge Fischer exphasizes the application of G. A. 5613 to the present situation.

Therefore, for the reasons above expressed, and following the principles established in G. A. 5613, I think the protest should be sustained.

(T. D. 34808—G. A. 7604.)

Reappraisement.

1. FINDING MARKET VALUE.

The duty of an appraising officer, as defined in paragraph K, section 3, tariff act of 1913, is to find market value and report such to the collector. A general appraiser hearing an appeal to reappraisement is governed by the same law, and his finding, based on the facts introduced at the trial, is a judicial determination as to value.

2. GENERAL AVERAGE.

A general average of dissimilar merchandise is not the way to establish market value, especially when the articles are entered and valued separately.

3. ENTERED VALUE.

An appraising officer is bound to accept for assessment purposes an amount not less than the entered value placed upon the merchandise by the importer, and on appeal the burden rests upon the importer disputing the value to establish by testimony that the advance is not correct. A general appraiser has no authority to arbitrarily disregard the testimony and sustain a value not supported by testimony.

United States General Appraisers, New York, September 28, 1914.

In the matter of reappraisement 76433 of American Express Co. on jewelry.

SULLIVAN, *General Appraiser:* The merchandise covered by this reappraisement is jewelry. It was formerly owned by Lord Strathcona, and after his death forwarded by his executors to J. W. Sterling, 55 Wall Street, New York City, N. Y. Prior to its shipment to the United States it was appraised in London under the British law for inheritance tax and a value placed thereon of £1,018. Hampton & Son forwarded it to the United States under duly authenticated invoice. Taking the appraisal of the inheritance-tax appraisers as the market value, it was thus entered by J. W. Sterling at the port of New York. The invoice covers a great number of articles, each itemized and valued separately. The appraising officer, after examination, on many items accepted the entered value. On a number the value was advanced more than 75 per cent, and on one item more than 100 per cent above the entered value. The case is now being heard on appeal from the action of the appraiser on the articles advanced. The importer did not dispute the value placed on the articles advanced by the appraiser. It was his contention that the entered value of the merchandise not advanced was more than its market value, and that if an average value of the entire lot was considered it would practically amount to the total invoice value of the merchandise. To sustain this contention the importer placed the examiner upon the stand and offered to prove by him that the entered value of the articles not advanced was more than their market value. This was objected to by the Government on two grounds: First, that the entered value of the merchandise must be accepted by the appraising officer for assessment purposes; and, second, that an average value

of merchandise similar to that in dispute can not be taken in arriving at market value; that each article, being invoiced separately, of different cuttings, designs, and quality, must be valued separately.

The one and only question in reappraisement cases is to ascertain market value. That this is the true rule a reading of the statute fully warrants.

The portion of section 3 of the tariff act of 1913 applicable to this question is as follows:

K. That it shall be the duty of the appraisers of the United States, and every of them, and every person who shall act as such appraiser, or of the collector, as the case may be, by all reasonable ways and means in his or their power to ascertain, estimate, and appraise (any invoice or affidavit thereto or statement of cost, or of cost of production to the contrary notwithstanding) the actual market value and wholesale price of the merchandise at the time of exportation to the United States, in the principal markets of the country whence the same has been imported, and the number of yards, parcels, or quantities, and actual market value or wholesale price of every of them, as the case may require.

It will be observed this statute gives to an appraising officer but one single power—to ascertain market value by all reasonable ways and means irrespective of any invoice, affidavit, statement of cost, or of cost of production. He is not permitted to average the value of two dissimilar articles. The examiner states that in ascertaining the value of an entire line of similar merchandise an average value may be taken in cases where the aggregate value of the invoice is in accord with the market value found by the appraiser. In such instances, if the merchandise will permit, the examiner looks into the total valuation as invoiced, and if it corresponds to the market value he finds, the entered value is approved. This is not taking average valuation; it is taking the valuation in the way provided by statute upon different items of merchandise of the same class.

By statute (par. I, sec. 3) the appraiser is bound to accept the entered value of the merchandise. This paragraph provides:

The duty shall not, however, be assessed in any case upon an amount less than the entered value, unless by direction of the Secretary of the Treasury in cases in which the importer certifies at the time of entry that the entered value is higher than the foreign market value and that the goods are so entered in order to meet advances by the appraiser in similar cases then pending on appeal for reappraisement.

This has been practically in every tariff act since 1818. Its history is interesting, but in no way has its effect been abrogated or repealed by any statute enacted since that date.

In Ullman *v.* United States (1 Ct. Cust. Appls., 61; T. D. 31032), Judge Montgomery, referring to section 7 of the customs administrative act of 1890, stated:

But that, reading section 7 in connection with section 19, there is a clear limitation placed upon the action of the collector, and that in no case can the assessment be less than the invoice or entered value.

This being the rule, the appraiser could do nothing else than accept the entered value as the market value of the goods that he did not advance. On the items advanced the merchandise was so clearly undervalued that he could not approve of it.

The first item appealed from is a gold primrose brooch set with a single diamond, entered at £15 and advanced to £30. The second item is a circular gold brooch set with 11 diamonds, entered at £40 and advanced to £70. Of other items advanced one is a sapphire, opal, and pearl butterfly brooch, entered at £30 and advanced to £40; also a diamond cluster and a two-stone union pin, entered at £120 and advanced to £150. An average value could not be placed on these items.

It follows that the examiner was acting entirely within his statutory rights in accepting the entered valuation of a portion of the merchandise and advancing the value on the remainder.

It is contended earnestly by counsel for the importer that it is the duty of a general appraiser to find dutiable value, which may be different from market value, and he cites in support thereof the Spingarn case (5 Ct. Cust. Appls., — ; T. D. 34002). That case in no way sustains this contention. The Spingarn case had reference entirely to the question of packing charges and whether or not they were part of the market value to be passed on by the appraiser or the dutiable value to be passed on by the collector. It was held by the court, speaking through Judge De Vries, that it was the duty of the appraiser to find market value, and when so ascertained to report to the collector. It then became the duty of the collector, in fixing the dutiable value, to add thereto charges and packing; and the *per se* value found by the appraiser with the value found by the collector as to packing charges made the dutiable value of the merchandise.

It is earnestly contended by counsel for the importer that it becomes the duty of the general appraiser to ascertain and estimate the dutiable value, and in so doing that he may disregard the testimony offered, even though uncontradicted, and place thereon his own value. We can not agree to such a proposition.

It is true the statute provides with reference to reappraisements that the "general appraiser and the boards of general appraisers shall proceed by all reasonable ways and means in their power to ascertain, estimate, and determine the dutiable value of the imported merchandise, and in so doing may exercise both judicial and inquisitorial functions." (Par. M, sec. 3.) This power, of course, implies that in estimating and determining dutiable value it shall be in the ordinary and judicial way upon evidence duly submitted in open court, and to determine the dutiable value as required by statute requires the general appraiser to hear the testimony offered and judicially determine from the weight of the testimony the value of the

merchandise. The inquisitorial powers give the right to order an investigation or require the production of books and papers, or such other means as may be deemed advisable to adopt that the truth may be known as to the dutiable value. It does not mean that competent, uncontradicted, and explicit testimony should be rejected; to do so would be a clear violation of the statute. In this case the testimony was so clear, uncontradicted, and explicit as to value that to refuse to consider it and to arbitrarily and without reason or testimony reduce a value thus established would be such reckless disregard of the law as not to be within the province of a general appraiser.

Another objection to taking the average value of the entire invoice, and, I think, an insurmountable one, is that the notice of appeal in specific terms declares that the appeal is taken on all items advanced. This would not permit the Board of General Appraisers to take into consideration in arriving at value the fact that the merchandise not advanced was entered at too high or too low a valuation. To do so would be to exercise equitable powers not vested in the board. Equity powers and rights are granted by a court of chancery and are among the illuminating stars of our civilization. The chancery power of a court is the corner stone of the rights of the individual and should never be circumscribed. The tariff act of the United States is in a different class. It is a specific taxing measure that neither permits nor admits of such equitable doctrine, especially with reference to reappraisement. It solely confers on general appraisers the authority to hear and determine the value of the merchandise, and when such value is ascertained it becomes the value upon which duty is assessed by the collector. The board has no other authority, and can only exercise the rights granted by statute. Its jurisdiction is strictly defined, and it must act solely within that limitation. Again, it is most strenuously insisted that as a few items are advanced more than 75 per cent, this valuation ought to be reduced, and thereby prevent forfeiture, as provided by statute, of the entire lot. It is insisted that a general appraiser has some inherent power which may be invoked to protect the property of the citizen from confiscation by the sovereign. Courts have certain inherent powers which are exercised for the protection of the citizen, among which may be mentioned the issuance of a writ of injunction to protect property and property rights where there is no adequate remedy at law. This is only exercised where there is no other remedy and is a power inherent in courts established by the Constitution. It is questionable whether by statute such powers could be taken from a court of chancery. However, the Board of General Appraisers, while a court, can only act upon evidence and determine the issue upon facts. Their powers are exclusively provided for by statute. They are not permitted to exercise any of the inherent powers of a court of chancery. The board is

governed by the strict rule of law applicable to a taxing statute and can only make such finding as the evidence establishes. Any finding disturbing such a valuation without sustaining evidence would be contrary to law. It rested with the importer to contest the value placed on the merchandise by the Government. This he did not do nor attempt to do.

I feel satisfied that the entry was made in perfect good faith, not for the purpose of depriving the Government of any revenue, but that is not the criterion upon which these appeals are heard. It comes up on a question of value to be established by evidence. The question of forfeiture is not before the board, and has no right to be considered. The law gave to the importer his day in court to establish value, and having refused to offer any testimony contradicting the testimony of the Government, he can not expect a general appraiser to assume that the valuation is too high without any testimony to support such contention.

It is claimed that the examiner did not follow the law in that he valued the stones and not the settings or mountings, and thereby his return is contrary to law. This is not correct. It was stated by Col. Treadwell that in the valuation of the merchandise he gave the importer the benefit of every doubt. He did not place much, if any, value upon the settings or mountings in arriving at the value of the jewelry; he placed the principal value upon the stones. His finding was as to the value of the jewelry as such in the condition in which it was imported. If he did not place much, if any, value upon the settings or mountings, he did not wrong the importer and did not violate any rule of law that would declare his action void.

As I find no warrant for disturbing the value found by the appraiser, his action is affirmed.

(T. D. 34809—G. A. 7605.)

Validity of appeal to reappraisement.

The fact that an invoice fails to furnish the information required by paragraph D of section 3 of the tariff act of October 3, 1913, does not deprive an importer of his right of appeal from an appraisement of the merchandise covered thereby. The collector having accepted the invoice and entry and having forwarded same to the appraiser who made an appraisement of the merchandise, the right of the importer to appeal to reappraisement is absolute. The collector may refuse entry upon such an invoice, but he can not, after its acceptance and appraisement of the merchandise covered thereby, contend that the importer has not a statutory right to demand a reappraisement.

United States General Appraisers, New York, September 14, 1914.

In the matter of reappraisement 74666 of Dwyer & Wedemann at the port of New York.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

This appeal is filed against the action of the appraiser in advancing the market value of certain merchandise by disallowing an item of 5

per cent purporting to represent the commission due the purchasing agent.

The Government contends that said appeal should be dismissed on the ground that the importer failed to set forth in his invoice "a true and full statement of the time when, the place where, the person from whom the same (the merchandise involved) was purchased or agreed to be purchased," as required by paragraph D of section 3 of the tariff act of 1913, insisting that said failure estopped the importer from availing himself of his statutory right of appeal to reappraisement.

Paragraph K of said section provides:

> That it shall be the duty of the appraisers of the United States, and every of them, and every person who shall act as such appraiser, or of the collector, as the case may be, by all reasonable ways and means in his or their power to ascertain, estimate, and appraise (any invoice or affidavit thereto or statement of cost, or of cost of production to the contrary notwithstanding) the actual market value and wholesale price of the merchandise at the time of exportation * * *.

Paragraph F of said section provides:

> That whenever merchandise imported into the United States is entered by invoice, a declaration upon a form to be prescribed by the Secretary of the Treasury, according to the nature of the case, shall be filed with the collector of the port at the time of entry * * *.

Paragraph M of said section grants to every importer the right of appeal to reappraisement whenever he may deem an appraisement too high, provided he has complied with the law covering entry.

In this case the importer filed an invoice, as required by paragraph F, and made his entry thereon, which the collector accepted. Subsequently the appraiser, to whom the papers were forwarded, appraised the merchandise, making the advance here complained of.

If the collector did not consider the invoice to be in conformity with paragraphs C and D of said section 3, tariff act of 1913, we think that he should have refused entry thereon and required the importers to give bond to produce a corrected invoice; but having failed so to do, and the invoice having been accepted as sufficient for purposes of entry and appraisement, we do not think the importer is thereafter to be denied his statutory right of appeal to reappraisement on the ground that he has failed to comply "with the requirements of law with respect to the entry and appraisement of merchandise."

It is impossible for us to conceive under what construction of the law it can be claimed that, after an importer has entered his goods and the same have been duly appraised by the appraiser, there is no course left open to the importer to take an appeal from said appraisement. If this doctrine should be declared sound, then the appraiser might, with the same propriety that he advanced the merchandise in this case 5 per cent in value, arbitrarily advance the value of any

merchandise to the point of seizure, without any recourse or right of appeal being available to importers.

Paragraph D contains no provision penalizing a failure on the part of importers to comply literally with its terms. It certainly does not provide that an importer who fails to show on his invoice the details required should be denied the right of appeal from an appraisement of his merchandise.

Failure to fully set forth on the invoice and entry the data required by law does not necessarily call for a dismissal of these proceedings, especially in view of the fact that both the collector and appraiser have duly and officially passed upon the merchandise covered thereby.

This appeal having come on regularly to be heard and this board having acquired jurisdiction of the subject matter thereof for the sole purpose of ascertaining and determining the "actual market value and wholesale price of the merchandise at the time of exportation to the United States in the principal markets of the country whence the same has been exported," we are decidedly of opinion that to deny an importer his statutory right of appeal merely because his invoice does not contain the data required by law, although his entry papers are in proper legal form, would be an act in excess of the legal authority of this board and without warrant of law.

The motion to dismiss the appeal is overruled.

(T. D. 34810.)

Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, Somerville, and Hay.

BEFORE BOARD 3, SEPTEMBER 28, 1914.

No. 36620.—BEANS, PEASE, AND MUSHROOMS IN TINS.—Protests 693306, etc., of Austin, Nichols & Co. et al. (New York). Opinion by Waite, G. A.

Austin *v.* United States (5 Ct. Cust. Appls., —; T. D. 34250) followed as to the dutiable weight of beans, pease, and mushrooms in tins.

No. 36621.—PROTESTS ABANDONED.—Protests 513129, etc., of Stein, Doblin & Co. et al. (New York), and protests 682129, etc., of Geo. S. Bush & Co. et al. (Port Townsend et al.).

Protests abandoned.

BEFORE BOARD 1, SEPTEMBER 30, 1914.

No. 36622.—BUNGO SULPHUR.—Protests 663370, etc., of Geo. S. Bush & Co. (Inc.) et al. (Portland, Oreg., and San Francisco). Opinion by McClelland, G. A.

Sulphur classified under paragraph 81, tariff act of 1909, was held entitled to free entry as crude sulphur (par. 686). Newhall *v.* United States (4 Ct. Cust. Appls., 134; T. D. 33410) followed.

No. 36623.—Dressed Furs—Dogskins.—Protest 732401 of Chaitin & Bohrow (New York). Opinion by McClelland, G. A.

Dressed dogskins classified at 30 per cent ad valorem were held dutiable at 10 per cent under paragraph 348, tariff act of 1913. G. A. 7569 (T. D. 34493) followed.

No. 36624.—Embroidered Leather Gloves—Schmaschen.—Protest 732085 of S. Kann, Sons & Co. (Baltimore), and protests 709720, etc., of Henry M. Peyser Co. (Boston). Opinions by McClelland, G. A.

Gloves with Paris point embroidery were held not subject to cumulative duty on the authority of United States *v.* Wertheimer (4 Ct. Cust. Appls., 338; T. D. 33528). Gloves classified as lambskin were found to be schmaschen and held dutiable under paragraph 454, tariff act of 1909, as claimed.

No. 36625.—Spear-Back Gloves.—Protest 682619 of Marshall Field & Co. (New York). Opinion by McClelland, G. A.

Abstract 13209 (T. D. 27674) followed as to leather gloves with spear-back embroidery held properly assessed with cumulative duty under paragraph 459, tariff act of 1909.

No. 36626.—Sponges.—Protests 731279, etc., of Leousi, Clonney & Co. (New York). Opinion by McClelland, G. A.

Certain sponges classified at 15 per cent ad valorem were held dutiable at 10 per cent under paragraph 68, tariff act of 1913. Abstract 36068 (T. D. 34629) followed.

No. 36627.—Goddard's Plate Powder.—Protest 716954 of the S. S. Pierce Co. (Boston). Opinion by McClelland, G. A.

Goddard's silver plate powder, classified as a chemical mixture under paragraph 3, tariff act of 1909, was held dutiable as whiting by similitude (par. 54). Bartley *v.* United States (3 Ct. Cust. Appls., 363; T. D. 32961) followed. United States *v.* Kraemer (4 Ct. Cust. Appls., 433; T. D. 33858) noted.

No. 36628.—Ruscus Leaves.—Protest 691619 of H. Bayersdorfer & Co. (Philadelphia). Opinion by McClelland, G. A.

Ruscus leaves chemically bleached were held properly classified under paragraph 438, tariff act of 1909.

No. 36629.—Feather Articles—Artificial Flowers.—Protests 330030–27899 and 384925–29322, etc., of the Theo. Ascher Co. (Chicago). Opinions by McClelland, G. A.

Fancy feathers and artificial flowers made in part of wire, classified under paragraph 425, tariff act of 1897, were held dutiable as manufactures in part of metal (par. 193). United States *v.* Berlinger (167 Fed., 800; T. D. 29577), and United States *v.* Edson (5 Ct. Cust. Appls., —; T. D. 34128) followed. Protests sustained in part.

No. 36630.—Halle Clay.—Protest 732539 of Norton Co. (Boston). Opinion by McClelland, G. A.

A commodity described as "Halle clay," classified under paragraph 76, tariff act of 1913, was claimed entitled to free entry under paragraph 450. Protest overruled.

No. 36631.—Protests Dismissed.—Protests 744035, etc., of the Watters Laboratories (New York). Opinion by McClelland, G. A.

Protests dismissed upon stipulation of counsel.

No. 36632.—Hatpin Tops—Jewelry.—Protest 525820 of M. J. Corbett & Co. and protest 524957 of Hensel, Bruckmann & Lorbacher (New York). Opinions by Sullivan, G. A.

Hatpin tops of brass set with imitation precious stones were held commonly or commercially known as jewelry under paragraph 448, tariff act of 1909, on the authority of Cohn *v.* United States (4 Ct. Cust. Appls., 378; T. D. 33536). Protests sustained in part.

No. 36633.—Rosaries.—Protest 731511 of the R. A. Koch Co. (Cleveland). Opinion by Sullivan, G. A.

Protest overruled as to rosaries classified as manufactures of metal, silver plated, under paragraph 167, tariff act of 1913.

No. 36634.—Amber Beads.—Protest 725802 of the Halle Bros. Co. (Cleveland). Opinion by Sullivan, G. A.

Amber beads, temporarily strung, classified under paragraph 333, tariff act of 1913, were claimed dutiable as manufactures of amber. Protest overruled. G. A. 6657 (T. D. 28390) cited.

No. 36635.—Sapphire Blanks.—Protests 512196, etc., of Hensel, Bruckmann & Lorbacher et al. (New York). Opinion by Sullivan, G. A.

Sapphire blanks used for bearings in meters and other measuring instruments, classified as articles composed of semiprecious stones under paragraph 112, tariff act of 1909, were held dutiable as articles composed of earthy or mineral substances (par. 95). United States *v.* General Electric Co. (4 Ct. Cust. Appls., 287; T. D. 33494) followed.

No. 36636.—Imitation Jet Articles.—Protest 340535 of William H. Stiner & Son and protest 271505 of J. & H. Rosenberg (New York). Opinions by Sullivan, G. A.

Imitation jet articles made of metal and glass or paste were held dutiable under paragraphs 193 and 112, tariff act of 1897. United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506) and G. A. 6995 (T. D. 30444) followed.

No. 36637.—Protests Overruled.—Protest 423315 of Louis Metzger & Co., and protest 677094 of C. B. Richard & Co. (New York) and protests 291625, etc., of the Scruggs, Vandervoort & Barney Dry Goods Co. (St. Louis). Opinions by Sullivan, G. A.

Protests unsupported; overruled.

No. 36638.—Herbs, Cut—Drugs, Advanced.—Protest 643489 of Hensel, Bruckmann & Lorbacher (New York). Opinion by Brown, G. A.

Herbs, cut or ground, classified as drugs advanced in value or improved in condition under paragraph 20, tariff act of 1909, were claimed free of duty as crude drugs (par. 559). Protest overruled. Abstract 36209 (T. D. 34677) followed.

No. 36639.—Opium, Crude.—Protests 528055, etc., of Merck & Co. (New York). Opinion by Brown, G. A.

Merck *v.* United States (5 Ct. Cust. Appls., —; T. D. 34549) followed as to opium held dutiable as crude under the provisions of paragraph 41, tariff act of 1909.

No. 36640.—Fish in Tins.—Protest 733259 of R. H. Macy & Co. (New York). Opinion by Brown, G. A.

Protest overruled as to fish in tins classified under paragraph 270, tariff act of 1909. Abstract 36300 (T. D. 34727) cited.

No. 36641.—Fish in Oil.—Protests 459884, etc., of Neuman & Schwiers & Co. et al. (New York). Opinion by Brown, G. A.

Smith *v.* United States (5 Ct. Cust. Appls., —; T. D. 34008) followed as to fish in oil.

No. 86642.—FISH IN KEGS.—Protest 697251 of Levaggi, Granucci & Co. (San Francisco). Opinion by Brown, G. A.

United States *v.* Miller (5 Ct. Cust. Appls., —; T. D. 34443) followed as to fish in kegs.

No. 86643.—PROTESTS FILED TOO LATE.—Protest 702537 of Hensel, Bruckmann & Lorbacher (New York). Opinion by Brown, G. A.

Protest filed too late; dismissed.

No. 86644.—PROTESTS ABANDONED.—Protests 707425, etc., of Strohmeyer & Arpe Co. et al. (Boston), and protests 455845, etc., of the Continental Forwarding Co. et al. (New York).

Protests abandoned.

BEFORE BOARD 3, SEPTEMBER 30, 1914.

No. 86645.—CHERRIES IN BRINE—SULPHUR FUMES.—Protest 683119 of R. U. Delapenha & Co. (New York).

WAITE, *General Appraiser:* This case is based upon the theory entertained by the importers that the goods in question are what are known as "cherries in brine," free of duty under paragraph 571, tariff act of 1909, which provides for "fruits in brine." The importation was assessed under paragraph 274 at 2 cents per pound as edible fruits prepared in any manner.

The importers have given no testimony with reference to the amount of salt contained in the so-called brine, but have contented themselves by assuming to show that the goods are the same as those imported in a previous case—protest 671804, Abstract 33664 (T. D. 33763), the record in which case was introduced in the case at bar. The Government analyst has filed a report in this case which shows the presence of 0.07 of 1 per cent of salt in the commodity. The testimony of the importers shows that the cherries have also been subjected to treatment with sulphur fumes. In protest 671804, *supra*, the record of which is introduced in evidence here, the testimony was that orders were given to put at least 1 per cent of salt in the commodity when it was manufactured. How much was actually put in there is nothing from which we can determine. In that case it was shown that the commodity was commercially known as "cherries in brine." It was, however, admitted that the sulphur had a preservative influence.

This or a similar commodity has been under review by the board in several cases, in none of which has it ever been claimed but that the sulphur has a preservative influence upon the cherries or fruit except in the case at bar, where it is claimed by the witness for the importers that the sulphur is of no effect as a preserving agent.

The rule was laid down in Abstract 30741 (T. D. 33018), affirmed by the Court of Customs Appeals in Mihalovitch *v.* United States (4 Ct. Cust. Appls., 98; T. D. 33372), that cherries were to be considered cherries in brine if they contained sufficient salt to preserve them until converted into some other commodity; in other words, enough to preserve them during transportation and the time which would necessarily elapse for their conversion. We think, however, it must appear positively that the salt would constitute a brine, and that it would be sufficient for such preservative effect without any other agent. In no case have we been asked to find that 0.07 of 1 per cent of salt in water would constitute brine. In our opinion it would be insufficient, and we think it would be insufficient to act as a preservative by itself. In fact, it may be termed almost negligible in quantity.

In the case of Re American Express Co., Abstract 32400 (T. D. 33433), we used this language:

We learn from the evidence submitted on the part of the importers that the quantity of salt is very slight, ranging from about 0.26 to 0.28 of 1 per cent. The report of the appraiser, however, indicates that it ranges from 0.16 to 0.20 of 1 per cent.

This is less salt than has been present heretofore in importations of this kind, which were held to be fruits in brine. In order to pass a commodity with a solution of this strength, it would have to appear positively that it did act as a preservative. In the testimony of the importers' witness we find the following:

Q. How much [salt] in your experience is it necessary to have in order to preserve the cherries indefinitely?—A. Very little; practically none.

Q. What does preserve them?—A. The sulphur-fuming process which they go through.

Q. Then the brine has very little to do with preserving them?—A. Only as an assistant if the process of sulphur fuming is carelessly done.

Q. From your knowledge would you think that 0.2 of 1 per cent would be sufficient to preserve the cherries for any length of time?—A. With the addition of the sulphur dioxide which is put in there, yes.

The testimony quoted above is substantially what has been given before this board with reference to the preserving qualities of sulphur. We are not disposed, then, to ascribe to the very small amount of salt in this case the qualities of a preservative simply because the cherries contained in the water are preserved, they having been subjected to sulphur fumes. In view of the ruling heretofore made, this question can only be determined from positive, intelligent, and accurate testimony. If we are to accept loose expressions with reference to this question of preservation of fruit by means of salt or in a solution of salt, it is difficult to determine where we shall be able to stop. It is altogether possible that if but 0.001 of 1 per cent of salt were placed in the water, the cherries would retain their fresh condition long enough to be imported into the United States and pass examination. Indeed, it is well known that certain fruits, berries, for instance, have been imported in clear water, and have arrived whole and fresh, and been assessed as berries in their natural condition.

In the case at bar, we think the importers have failed to show that this commodity is cherries in brine under the rule heretofore laid down for the interpretation of the statute. The protest is therefore overruled.

No. 36646.—Value of Horses.—Protest 725932 of W. R. Wood (Seattle). Opinion by Waite, G. A.

Protest overruled as to value of horses.

No. 36647.—Weight of Mustard.—Protest 712315 of Neuman & Schwiers Co. (New York). Opinion by Waite, G. A.

It is claimed here that duty was assessed upon an excessive weight of mustard. Protest sustained in part.

No. 36648.—Mushrooms in Tins.—Protests 713943, etc., of O. G. Hempstead & Son et al. (Philadelphia et al.). Opinion by Waite, G. A.

Austin *v.* United States (5 Ct. Cust. Appls., —; T. D. 34250) followed as to mushrooms in tins.

No. 36649.—Protests Abandoned.—Protests 264148, etc., of Austin, Nichols & Co. et al. (New York).

Protests abandoned.

(T. D. 34811.)

Neutrality—Clearance of vessels.

Instructions to collectors of customs relative to a change in the color of merchant vessels as affecting their status.—T. D. 34693 of August 10, 1914, paragraph 5, modified.

Treasury Department, *October 8, 1914.*

To collectors of customs:

Your attention is invited to T. D. 34693 of August 10, 1914, paragraph 5 of which specifies certain acts which will change the status of a merchant vessel to that of a war vessel.

You are instructed that a mere change of the color of a merchant vessel or of any portion thereof, evidently designed only to render her less visible and diminish the risk of capture, shall not be deemed to constitute a change of the status of the vessel when not accompanied by any other evidence of intent to alter her status as a merchant vessel.

T. D. 34693 is therefore hereby modified accordingly.

(102574.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 34812.)

Drawback on cords and loops.

T. D. 34365 of April 9, 1914, extended to cover additional cords and loops manufactured by Bernhard Ulmann & Co., of New York, with the use of dyed imported artificial silk yarn.

TREASURY DEPARTMENT, *October 7, 1914.*

SIR: The department's regulations of April 9, 1914 (T. D. 34365), providing for the payment of drawback on cords and loops manufactured by Bernhard Ulmann & Co. with the use of dyed artificial silk yarns manufactured for and on their account from imported artificial silk yarn in the gray, are hereby extended to cover the cords and loops described in the sworn statement of Bernhard Ulmann & Co., dated September 25, 1914, which is transmitted herewith for filing in your office.

The said regulations are also amended to provide that supplemental sworn schedules covering additional styles of cords and loops manufactured by the said company with the use of such dyed imported artificial silk yarn may be filed. Upon verification of such supplemental schedules, drawback on the cords and loops described thereon may be allowed.

Respectfully, ANDREW J. PETERS,
(64841.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34813.)

Drawback on medicinal preparations and flavoring extracts.

Drawback on medicinal preparations and flavoring extracts manufactured with the use of wholly imported alcohol, wholly domestic tax-paid alcohol, and imported materials.

TREASURY DEPARTMENT, *October 8, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations

(T. D. 31695 of June 16, 1911), on preparations designated as "Predigested Beef, Liquor Diastos and Beef, Iron and Wine" manufactured with the use of imported alcohol, medicinal preparations and flavoring extracts manufactured with the use of domestic tax-paid alcohol, and medicinal preparations and flavoring extracts manufactured with the use of imported material, as specified in the sworn statements of the manufacturers, the H. K. Mulford Co., of Philadelphia and New York, filed under T. D. 26253 of April 7, 1905, T. D. 26254 of April 7, 1905, and T. D. 32932 of November 12, 1912, and the sworn statement of the manufacturers, dated April 16, 1914, transmitted herewith.

In the case of imported crude drugs used by the H. K. Mulford Co. in the manufacture of medicinal preparations specified in their sworn statement of April 16, 1914, which are processed or refined in any manner prior to being incorporated in the medicinal preparation, a manufacturing record shall be kept, which will show, in addition to the usual import data, the quantity of processed or refined drug obtained from each lot of crude drugs treated, the quantity of waste and the value of such waste, if any. Each such lot of processed or refined drug shall be given a serial number by the manufacturers. An abstract from such manufacturing record shall be filed with each drawback entry and the drawback entry shall identify the processed or refined imported drug appearing in the preparations covered thereby with the manufacturer's serial number.

In the case of alcohol, the allowance shall not exceed the quantity appearing in the exported preparations, as shown by the sworn statements of the manufacturers above referred to.

In the case of imported drugs, the allowance shall not exceed the quantity used in the manufacture of the exported preparations, as shown by the abstract from the manufacturing record, prescribed above, and the sworn schedule of the manufacturers, dated April 16, 1914, herewith.

In the case of medicinal preparations manufactured with the use of opium or mercurial preparations made from imported crude opium or from mercury, quicksilver, or cinnabar, and purchased from the manufacturer by the H. K. Mulford Co., a drawback rate covering such opium and mercurial preparations must be established for each manufacture prior to the liquidation of entries under these regulations.

Supplementary sworn statements covering other medicinal and toilet preparations and flavoring extracts manufactured with the use of either wholly imported alcohol or with the use of wholly domestic tax-paid alcohol may be filed and upon verification of such supplementary schedule by the special agents, drawback on the preparations covered thereby may be allowed.

T. D. 26253 of April 7, 1905, T. D. 26254 of April 7, 1905, and T. D. 32932 of November 12, 1912, are hereby revoked.

Respectfully, ANDREW J. PETERS,
(26389) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34814.)

Drawback on velvets and plushes.

Drawback on velvets and plushes manufactured by the Salt's Textile Manufacturing Co. with the use of imported yarns.

TREASURY DEPARTMENT, *October 8, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on velvets and plushes manufactured by the Salt's Textile Manufacturing Co., of Bridgeport, Conn., with the use of either wholly imported artificial silk yarn, mohair yarn, worsted yarn, silk yarn, and silk and cotton yarn; or with the use of such imported materials in combination with domestic materials.

A manufacturing record shall be kept, which shall show, in addition to the usual import data, the lot number and date of manufacture of each lot of velvet or plush manufactured for exportation with benefit of drawback, the quantity of each kind of velvet or plush produced, the quantity of each kind of imported material used in the manufacture thereof, the quantity of each kind of imported material appearing therein, and the quantity and value of each kind of waste incurred. A sworn abstract from such manufacturing record shall be signed with each drawback entry.

The allowance shall not exceed the quantities of imported materials appearing in the exported velvets and plushes, with an addition to compensate for waste as shown by the sworn abstract from the manufacturing record, such allowance to be reduced according to the quantities of imported materials which the value of the waste will replace.

The sworn statement of the manufacturers, dated September 21, 1914, is transmitted herewith for filing in your office.

T. D. 32797 of August 31, 1912, is hereby revoked.

Respectfully, ANDREW J. PETERS,
(95145.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34815.)

Customs cigar stamps.

The cost of customs cigar stamps for use in bonded manufacturing warehouse fixed at $1 per thousand.—T. D. 34659 of July 22, 1914, modified.

TREASURY DEPARTMENT, *October 8, 1914.*

SIR: Referring to T. D. 34659 and to your letters of the 8th, 12th, and 13th of August concerning the charge made for customs cigar stamps required by the act of October 3, 1913, to be affixed to boxes containing cigars made in bonded manufacturing warehouses, I have to advise you that, upon further consideration, after procuring additional information regarding the cost of engraving and printing said stamps, the department has concluded to fix the price of the stamps to the manufacturers of cigars at $1 per thousand, instead of the price stated in the decision above mentioned. Said decision is therefore hereby modified accordingly.

Charges for future supplies of said stamps will be made at the rate of $1 per thousand, and you are authorized to make refunds to the proprietors of bonded manufacturing warehouses for supplies of stamps heretofore furnished in excess of said price in all cases where protests have been filed.

Respectfully, ANDREW J. PETERS,
(100576.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Jacksonville, Fla.*

(T. D. 34816—G. A. 7606.)

Rugs.

Brussels and Wilton rugs made up of strips of carpeting of the usual width (27 inches) are dutiable under paragraphs 385 and 386, respectively, tariff act of 1909, and not under paragraph 391, which provides for carpets woven whole for rooms and rugs woven in one piece.

United States General Appraisers, New York, October 5, 1914.

In the matter of protest 718903 of R. Keith Furniture & Carpet Co. against the assessment of duty by the surveyor of customs at the port of Kansas City.

Before Board 1 (MCCLELLAND, SULLIVAN, and BROWN, General Appraisers).

BROWN, *General Appraiser:* The deputy surveyor, acting examiner, reports that the merchandise "consisted of one rug, 9 feet by 12 feet, made up from Brussels carpeting of the usual width, 27 inches, and a border of the same material, but of a pattern suitable for a border, and two rugs, 9 feet by 12 feet, of Wilton carpeting of the same width of materials, made up as in case of the Brussels above mentioned."

It was classified at 10 cents per square foot and 40 per cent under paragraph 391, act of 1909, reading:

391. Carpets of every description, woven whole for rooms, and Oriental, Berlin, Aubusson, Axminster, and similar rugs * * *.

The protest says:

These rugs are not "woven whole for rooms," but are made in 27-inch widths, and we think that the Brussels rugs should be classified under article 386, 44 cents per square yard; * * * and the two Wilton rugs under article 385, 60 cents per square yard. * * *

Paragraphs 385 and 386 read:

385. Saxony, Wilton, and Tournay velvet carpets, figured or plain, and all carpets or carpeting of like character or description, sixty cents per square yard, and in addition thereto forty per centum ad valorem.

386. Brussels carpets, figured or plain, and all carpets or carpeting of like character or description, forty-four cents per square yard, and in addition thereto forty per centum ad valorem.

The one essential fact in this case, which stands out, is the statement of the appraiser that all the carpeting here is "of the usual width, 27 inches"—that is, the ordinary carpet strip.

Considering the carpet and rug provisions of Schedule K as a whole, we find first seven classes of specifically mentioned carpets, paragraphs 384 to 390, inclusive, at different rates. None of these would seem, on their face, to include rugs as distinguished from carpets. Then follows a provision under which classification is made for "carpets of every description woven whole for rooms, and Oriental, Berlin, Aubusson, Axminster, and similar rugs." The rugs here mentioned would seem by this association to be completed articles "woven whole for rooms," the familiar conception of a rug as distinguished from a carpet made of strips fastened together. And this is borne out by the dictionary definitions. See Century Dictionary (1904):

Aubusson carpet.—A carpet made at Aubusson, France. It is made in one piece, in the hand or needlework style of the Indian carpets, etc.

Axminster carpet.—A variety of Turkish carpet, * * *. So named from the town of Axminster, in Devonshire, England.

Persian carpet.—A carpet made in one piece, instead of in breadths or strips to be joined.

Turkish carpet.—A carpet similar to the Persian.

Thus it would also seem that the word "oriental" would include carpets like the Turkish and Persian, presumably also woven in one piece.

The Century Dictionary defines a rug as "woven in one piece," and defines a carpet as "made of several widths sewed together and intended to cover all the floor space of a room, as distinguished from a rug, which is usually woven in one piece." Further, the New

Standard Dictionary defines a rug as "differing from a carpet in that it is properly made in one piece," and further states, "rugs * * * if composed of more than one piece, are popularly called '*made rugs.*'"

To return to the statute, after mentioning "druggets and bockings" (a peculiar kind of rug), in the next paragraph there follows a catch-all provision for "carpets and carpeting of wool, flax, or cotton not specially provided for, and mats, matting, and rugs of cotton." Then comes another provision for rugs, reading as follows:

394. Mats, rugs for floors, screens, covers, hassocks, bed sides, art squares, and other portions of carpets or carpeting made wholly or in part of wool, and not specially provided for in this section, shall be subjected to the rate of duty herein imposed on carpets or carpetings of like character or description.

Here, again, by association, the rugs for floors spoken of would seem to be so-called rugs (made rugs), made up from portions of carpets or carpeting, for the words "and portions of carpets or carpeting" directly refer to the rugs for floors with which they are connected in the context.

So that, considering all these provisions as a whole, to give them a uniform and consistent meaning, and considering the context and relative position of each group or class, it would seem necessary to hold that the two Wiltons must come under paragraph 385, and the Brussels under paragraph 386, as claimed, unless they are "woven whole for rooms," when the classification would be correct.

The statement previously referred to, made by the appraiser, and not denied anywhere in the record, that they are made up of strips 27 inches wide, of the usual size, shows conclusively that they are not woven whole for rooms, and the importers are entitled to their claim Nor are they rugs under paragraph 391, even if casually so described, because, in any event, paragraph 391 refers to rugs similar to oriental, Berlin, Aubusson, or Axminster rugs.

In Beuttell *v.* Magone (157 U. S., 154) Mr. Justice White construes the act of March 3, 1883. This statute was differently worded, but evidently drawn on the same theory and intending substantially to make the same kind of distinctions as the statute now under consideration. On an issue between a clause of the same general character as paragraph 394, act of 1909, and another one of the same general character as paragraphs 385 and 386, he says, in construing the language of that act:

The imposition of a different duty on rugs of a particular kind is an exception to the general rule established by the statute. The exception is as "to rugs, screens, covers, hassocks, bed sides, and *other portions of carpets and carpetings*," which are made to pay the duty imposed on "carpets and carpetings of like character and description." The obvious construction of this language is that which makes the words "other portions of carpets and carpetings" qualify the enumerated articles, and of course if they

be thus construed, only rugs made from "portions of carpets and carpetings" would be subject to the exceptional classification.

* * * * * * *

We think the purpose of the statute, plainly conveyed by its text, was to tax carpets as enumerated therein. That the effect of its language and its intent were also to tax rugs, made as rugs, and clearly distinguishable as such, by reason of their process of manufacture, size, shape, pattern, etc., at the duty imposed on rugs, but to tax rugs made from pieces of carpets or carpetings at the rate imposed on the carpet from which they were made, since, although answering the purpose of a rug, they were really carpeting itself, being made from parts or portions thereof.

Protest sustained.

(T. D. 34817—G. A. 7607.)

Orchil.

A liquid or semiliquid dyestuff known as orchil, orchil liquor, and orchil extract, obtained by maceration from lichens fermented in the presence of ammonia, which on analysis shows traces of sulphur in combination with coloring matter, the sulphur being used only for the purpose of neutralizing the excess ammonia, is entitled to free entry under paragraph 642, tariff act of 1909.

United States General Appraisers, New York, October 5, 1914.

In the matter of protests 721999, etc., of Innis, Speiden & Co. *et al.*, against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers).

McClelland, *General Appraiser:* The merchandise consists of a liquid or semiliquid dyestuff obtained by the maceration process from lichens fermented in the presence of ammonia. After fermentation sulphuric acid was introduced for the purpose of neutralizing the excess of ammonia.

The invoices describe the merchandise as "archil liquor," and the appraiser returned it as "vegetable extract suitable for dyeing" and "vegetable extract for coloring." Regardless of the form of the appraiser's returns there is no reason to doubt that the merchandise covered by the several invoices and subject of protest is the same. It was assessed for duty at the rate of 15 per cent ad valorem under the provisions of paragraph 22 of the tariff act of 1909. It is claimed that free entry should have been allowed under paragraph 642 of the free list in said act.

The merchandise has been variously known as orchil, orchil liquid, and orchil extract, and it appears that similar merchandise under one or the other of these names has been imported and passed free of duty for many years, and that a change in classification was given the liquids covered by these protests because of reports made by the Government chemist that certain varying percentages of sulphur, combined with coloring matter, were found upon analysis in samples of such liquors.

By consent the following statement of the method of producing orchil liquor was placed upon the record:

The manufacturers say that the coloring matter of orchil is produced by the maceration of the orchilla lichen in dilute ammonia in conjunction with oxidation produced by contact with air during the period of several weeks. At the termination of this treatment the residual ammonia is neutralized with dilute sulphuric acid.

The chemist who analyzed the samples would not say that sulphur is not naturally present in orchil, nor was he able to state that sulphur might be introduced for any purpose other than that stated by the manufacturers and importers. This witness stated that orchil is soluble in the absence of sulphur, and therefore if sulphur was introduced it must have been introduced for some other purpose than to make the liquid soluble.

The examiner who passed the merchandise with advisory classification, which was followed by the collector in assessing duty, states that he has been passing orchil liquor for 10 years, and always free of duty until some time during the summer of 1913, when it was discovered that an orchil extract in powdered or crystal form, designed for use in coloring food, was sulphonated. Upon this discovery samples of the liquid in question were sent by the appraiser to the laboratory for analyses, with the results indicated by the chemist, Dr. Berry; and it now appears that since this discovery all orchil, orchil liquor, or orchil extract which, upon analysis, shows traces of sulphur in combination with coloring matter, is returned for duty as being sulphonated.

This course we do not think is justified by the record. There is not a scintilla of proof to show that this orchil liquor is in any way different from the orchil liquor which Examiner Montgomery stated had been passed free of duty by him for over 10 years, and which the witness Klipstein says has been passed free of duty for 30 years. On the contrary, Klipstein states that the orchil liquid involved is in all respects the same as that which he has handled and which has been passed free through this long period of years. For aught that appears of record there has been no change in the processes of producing orchil liquor, and it stands uncontradicted in the record that when, in its production, sulphur is used, it is only so used for the purpose of neutralizing the excess of ammonia.

Departure from the long-continued practice of passing this merchandise free of duty is not warranted by either change of the law, changes in the processes of production, or the uses to which it may be applied.

In Gage Bros. *v.* United States (2 Ct. Cust. Appls., 430; T. D. 32174) Judge De Vries, writing for the court, says:

The stability and certainty of business enterprise is dependent in no class of cases more than in customs cases, where minute points of distinction abound, upon a stable adherence by the courts to plain, unmistakable, and well-settled rules of distinction

regardless of peculiar consequences in exceptional or particular cases. It is the better part of wisdom, and indeed vital to business undertakings, that distinctions of law and rules of decision be fixed and invariable, that the business world may understand and know upon what lines they may transact business, and that in their business transactions they will not be visited by unforeseen and harsh results.

The protests are sustained and the decisions of the collector reversed in each case.

(T. D. 34818—G. A. 7608.)

Plain woven fabrics.

1. CRASH OR TOWELING.

Crash or toweling composed of flax, or of flax and cotton, of which flax is the component material of chief value, woven on a plain loom, having no extra attachments and using but two heddles, but having the threads so manipulated that in the border two small colored threads are inserted in the space taken up by one thread in the body of the fabric, are "plain woven fabrics," and are properly dutiable under paragraph 283, tariff act of 1913, and not as "manufactures of flax" under paragraph 284.

2. CUSTOMS PRACTICE.

Where it has been the practice of customs officers to classify a particular kind of fabric as "plain woven" for several years prior to the enactment of the tariff law, and the paragraph of the previous act covering the enumeration is reenacted without changing the language relating to such merchandise, it will be presumed that Congress adopted this customs practice and intended that the term should cover the same class of goods in the subsequent act.

3. COMMERCIAL DESIGNATION.

The term "plain woven fabrics" is not a term used in buying and selling goods, but the testimony shows that it is a commercial term understood in the trade as including a variety of fabrics dealt in under specific names; *Held*, That the merchandise in question is commercially known as a "plain woven fabric."

United States General Appraisers, New York, October 7, 1914.

In the matter of protests 730411, etc., of Douglas & Berry et al. against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

COOPER, *General Appraiser:* The merchandise in question consists of a woven fabric known as crash or toweling, composed of flax or of flax and cotton, of which flax is the component material of chief value. It is woven by the ordinary over-one and under-one thread weave in the body of the fabric, but in the border smaller colored threads are used in the warp and two threads are inserted in the space taken up by one in the body of the fabric, so that in the border the weft threads pass over two and under two instead of over one and under one. In one of the samples (Exhibit 8) the weft threads pass over three and under three of the small colored warp threads. The goods were classified for duty under paragraph 284, act of 1913, which is as follows:

284. All woven articles, finished or unfinished, and all manufactures of flax, hemp, ramie, or other vegetable fiber, or of which these substances, or any of them, is the

component material of chief value, not specially provided for in this section, 35 per centum ad valorem.

Several claims are made in the protests, but the one upon which the importers evidently rely is that the merchandise is dutiable under paragraph 283, which is as follows:

283. Plain woven fabrics, not including articles, finished or unfinished, of flax, hemp, or ramie, or of which these substances or any of them is the component material of chief value, including such as is known as shirting cloth, 30 per centum ad valorem.

It is the contention of the importers that the goods were woven on a simple plain loom and are, in fact, plain woven fabrics, and that they were included within the meaning of that term as it was understood in the trade at and immediately prior to the passage of the tariff act of October 3, 1913, and that, as the same character of merchandise was classified as plain woven fabrics during the life of the tariff act of 1909, it must be assumed that Congress intended that the words should cover the same class of goods under the present act that it did under the preceding act.

The Assistant Attorney General contends that, as the threads are woven in one way in the main body of the fabric and in a different way in the stripe or border, under the ruling in United States *v.* White (3 Ct. Cust. Appls., 382; T. D. 32968), the combination of the two produces a fabric that has a design made in the weaving, which takes it out of the category of plain woven fabrics.

Counsel for the Government objected to the testimony regarding the commercial designation of these fabrics on the ground that the expression "plain woven fabrics" was used in the tariff act as defining a method of manufacture and not as referring to a commercial name or commercial classification. The board admitted the testimony, however, overruling the objection. The witnesses uniformly testified that in trade and commerce, prior to the passage of the act of October 3, 1913, the merchandise in question would be included within the commercial term "plain woven fabrics." On cross-examination it appeared that the term was not used in wholesale transactions in buying and selling goods, but the dealers had an understanding as to the meaning of the same and as to what goods were included thereby. Practically the same question was involved in the case of *In re* Hermann (56 Fed., 477), wherein the question involved was whether or not certain Astrakhans were included within the term "pile fabrics." The court said:

They [the board] did not find and could not have intended to find that the term "pile fabrics" was not a commercial term, used to describe a numerous class of fabrics. The evidence is overwhelming that it was a generic term, applied to describe certain varieties of manufactured goods, including velvets, plushes, velveteens, corduroys, and some others. The great majority of the witnesses testified that it did not in-

clude Astrakhans; the others testified that it did include them, and was applied indiscriminately to all goods woven so as to embody certain specified peculiarities of form and texture. The substance of the first finding is that the term was not one by which any fabrics were bought and sold. In this sense the finding is obviously correct, because the undisputed testimony was that each of the several varieties embraced by the generic term was always bought and sold by its distinctive name.

The board has held that the term was not one by which any fabrics were bought and sold, and that there could therefore be no commercial designation of the term because commercial designation meant commercial nomenclature, the name by which an article is bought and sold. The court reversed the board, however, and held that the term "pile fabrics" was a commercial term including a variety of goods bought and sold under specific names; and so, in this case, the testimony shows that the term "plain woven fabrics" is a commercial term including a variety of fabrics dealt in under specific names, such as "shirting cloth," "linen crash," "union crash," "crash toweling," etc., and, though the term "plain woven fabrics" is never used in buying and selling transactions, within the trade understanding goods woven like those in the importations in question are included within that designation.

The witnesses all testified that the merchandise in question was woven on a plain loom of the simplest construction used in weaving. This loom employs but two heddles, through which the warp threads are threaded. That part of the border of the fabric in which the fine, colored warp threads lay side by side and the filling thread passes over two and under two warp threads, was formed in the weaving by threading two of the small colored threads in the eye of one heddle instead of a single thread in each heddle, as in the body of the fabric. This causes the two small threads to appear in the fabric together, occupying the same amount of space that is used by one of the heavier threads in the body of the fabric. No extra attachment was used on the loom to get this result.

The term "plain woven fabrics" has been held to mean plain as distinguished from twilled or figured effects produced in the process of weaving (United States *v.* Lamb, 99 Fed., 262; G. A. 4785, T. D. 22560), but in the case of United States *v.* White, *supra*, the court held where two different processes of plain weaving are combined in one fabric, one kind of weaving in the body and the other in the border, that such a combination makes a figured effect and such goods are not plain woven fabrics. It appears from the testimony in this record, however, that the chain border in the crash passed upon in United States *v.* White, *supra*, was produced by an extra attachment to the loom, known as the Dobby attachment, and that the merchandise in the case at bar was produced on a plain loom without the use of any additional attachment. It thus appears that the crash

passed upon by the court in the case cited is not of the same character as that now before the board and was not made in the same manner. That case is therefore not an authority to be followed here, because there is not a combination of two kinds of weaving in the merchandise now before us. It is woven in the border in the same manner that it is in the body of the fabric and is a plain weave throughout the fabric.

But, aside from the question of commercial designation and the process of weaving, it is established by the testimony that merchandise identical with that here in question was uniformly classified as "plain woven fabrics" by customs officers during the life of the preceding tariff act. In the act of 1913, Congress reenacted the provisions for plain woven fabrics. It must be presumed, therefore, that Congress adopted this customs practice and intended that the term "plain woven fabrics" should cover the same class of goods under the tariff act of 1913 that it did under the preceding tariff act. In Ulmann *v.* United States (5 Ct. Cust. Appls., —; T. D. 34551) the court held that coronation cord was properly classifiable as "cord" on the sole ground that it had been so classified for a number of years prior to the enactment of the tariff act of 1909, disregarding the commercial testimony and the fact that it had held in a previous decision (Ulmann *v.* United States, 4 Ct. Cust. Appls., 77; T. D. 33363) that the same merchandise was not a cord in fact. In accordance with the ruling therein laid down, therefore, it follows that the merchandise in question must be classified as "plain woven fabrics" under the act of 1913.

It appearing to our satisfaction that the merchandise under discussion is in fact a plain woven fabric, that it is included within the meaning of the term "plain woven fabrics" as that term was understood in trade and commerce at and immediately prior to the enactment of the tariff act of October 3, 1913, that the goods were woven on the plainest and most elementary form of looms, using no extra attachments to produce a figured or fancy effect, and that identical merchandise was classified as "plain woven fabrics" during the life of the tariff act of 1909, we must decide that the importation in question is dutiable at 30 per cent ad valorem as "plain woven fabrics" under paragraph 283 of the act of 1913. To that extent the protests are sustained.

A further claim is made that a discount of 5 per cent on the duties should be allowed under subsection 7 of paragraph J of section 4 of said act. No evidence has been offered to show that the merchandise was imported in a vessel admitted to registration under the laws of the United States, and on the authority of G. A. 7540 (T. D. 34246) this claim is overruled.

(T. D. 34819—G. A. 7609.)

Cotton towels woven on Jacquard looms.

1. SPECIFIC PROVISION.

Towels made of cotton and woven on Jacquard looms, being more specifically provided for as "towels * * * made of cotton * * * and not otherwise provided for" than as "all other Jacquard figured manufactures of cotton," are dutiable under paragraph 264, tariff act of 1913, and not under paragraph 258.

2. STATUTORY CONSTRUCTION—GENERAL TERMS.

All laws should be interpreted so as to give a sensible construction. General terms should be so limited in their application as not to lead to an absurd or ridiculous result.

United States General Appraisers, New York, October 7, 1914.

In the matter of protest 734928 of M. Gardner & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

COOPER, *General Appraiser:* The merchandise covered by this protest consists of cotton towels. The appraiser reports that said articles were woven on a Jacquard loom, and return for duty was made at the rate of 30 per cent ad valorem under the last clause in paragraph 258, act of 1913, reading:

258. * * * All other Jacquard figured manufactures of cotton or of which cotton is the component material of chief value, * * *.

Against this classification the importers duly and seasonably protested, claiming the articles properly dutiable at the rate of 25 per cent ad valorem under paragraph 264, which is as follows:

264. Towels, bath mats, quilts, blankets, polishing cloths, mop cloths, wash rags or cloths, sheets, pillowcases, and batting, any of the foregoing made of cotton, or of which cotton is the component material of chief value, not embroidered nor in part of lace and not otherwise provided for, * * *.

The issue presented is purely a question of law. The record shows that the articles are towels, and that they were woven on looms having a Jacquard attachment. As towels they are specially provided for in paragraph 264, but in the absence of such specific provision they would seem to be covered by the provisions in paragraph 258. The Government contends, however, that the provision for "*all* other Jacquard figured manufactures of cotton" indicates that the scope of the provision is broad and all-inclusive, and that the purpose of the provision was to cover all goods made by a specific operating device, the Jacquard. Counsel relies upon the case of United States *v.* Harper (2 Ct. Cust. Appls., 101; T. D. 31655), wherein a provision for "fans of all kinds, except palm-leaf fans," was held to be of such positive import that it actually did cover all kinds of fans, regardless of other tariff provisions. In that case, however, the court did not base its decision solely on the ground that the use of the word "all"

in the statute made the provisions thereof inclusive of every variety of fan, as will be seen from the following excerpt relating to that case, taken from the decision in Claflin et al. *v.* United States (3 Ct. Cust. Appls., 401; T. D. 32988):

> The decision (United States *v.* Harper) was rested upon, first, the import of the words "of all kinds," and, secondly, of the words "except common palm-leaf fans." The court deemed the expression "fans of all kinds" indicative of a congressional purpose to reach out into "all kinds," classes, and conditions of such merchandise and include them within the paragraph. Certainly a more apt or comprehensive term for that purpose could not be employed. The court further gave weight to the added exception, "except common palm-leaf fans," applying the maxim "*expressio unius est exclusio alterius*"—the excepting of the one includes all others—which, reinforcing the broad scope of the words "fans of all kinds," left no escape in the opinion of the court from the conclusion that the provision was intended to be exclusive in its application.

We are of opinion that the same degree of specificness can not be given to the term "all other Jacquard figured manufactures of cotton," which is not as extensive and inclusive as "fans of all kinds." The term "Jacquard figured manufactures of cotton" is an abstract term referring to a variety of merchandise, while the provisions for "towels * * * made of cotton" is concrete and specifies particular things. Manifestly, the latter provision is the more specific, and, under the ordinary rule as to the superiority of specific provisions over those couched in general terms, the merchandise is clearly classifiable under paragraph 264. Moreover, it is a fundamental and well-established principle of statutory construction that absurd and ridiculous results must be avoided where the language of a statute will permit. In United States *v.* Kirby (7 Wall., 482, 486) the court said:

> All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always therefore be presumed that the legislature intended exceptions to its language which would avoid results of this character. The reason of the law in such cases should prevail over its letter.

Applying this rule of construction in the ascertainment of the legislative intent, we are constrained to hold that such articles as are specifically mentioned in other provisions of the act, such as the towels in question, were not intended by Congress to come within the purview of paragraph 258. Any other construction would lead to an absurd result. For what possible reason could Congress have for making special provisions for towels, blankets, and other specific articles commonly woven on a Jacquard loom, if it intended that such goods should be classifiable as "Jacquard figured manufactures of cotton." If the provisions of the paragraph are as broad and all-inclusive as is contended for by the Government, we would have to hold that laces, lace curtains, cotton table damask, and many other commodities and fabrics made on the Jacquard loom would be

dutiable as "Jacquard figured manufactures of cotton," notwithstanding that Congress has made special provision for such articles elsewhere in the act. The clause in question is indefinite and ambiguous, and although much may be said in favor of the view taken by the Assistant Attorney General, it is thought that the construction contended for by the importers is supported by more cogent and consistent reasoning. The question of intent of the legislative body in all cases of statutory construction and interpretation, if it can be ascertained, is of primary importance. If we take into consideration the fact that Jacquard goods are fancy goods, and that all the goods provided for in paragraph 258 are in the nature of luxuries, we can easily see the reason why Congress made special provisions, at lower rates of duty, for "towels, bath mats, quilts, blankets, polishing cloths, mop cloths, wash rags or cloths, sheets, pillowcases, and batting," because each and every one of them is a necessity in every home.

Another argument made in support of the correctness of the collector's classification is that the provisions of paragraph 264 are limited by the phrase "not otherwise provided for," while those of paragraph 258 are not so limited. We are of opinion that there is no force in this reasoning, however, as it has been held in numerous decisions that the phrase "not specially provided for" does not lessen the relative specific qualities of the provision it modifies. See Knauth, Nachod & Kuhne *v.* United States (4 Ct. Cust. Appls., 58; T. D. 33307) and the authorities therein cited.

For the reasons above given, the protest claim of 25 per cent ad valorem under paragraph 264 is sustained.

A further claim is made in the protest that a discount of 5 per cent on the duties should be allowed under subsection 7 of paragraph J of section 4 of said act. No evidence has been offered to show that the merchandise was imported in a vessel admitted to registration under the laws of the United States, and following G. A. 7540 (T. D. 34246) this claim is overruled.

(T. D. 34820—G. A. 7610.)

Straw rugs.

Woven rugs in which cotton thread or cord is used in the warp, and a cord made of twisted straw in the weft are dutiable as "mats and rugs manufactured from straw, round or split," under paragraph 272, act of 1913, and not as "mats and rugs made of vegetable fiber" under paragraph 273.

United States General Appraisers, New York, October 9, 1914.

In the matter of protest 730923 of Hibben, Hollweg & Co. against the assessment of duty by the collector of customs at the port of Indianapolis.

Before board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

COOPER, *General Appraiser:* The merchandise covered by this protest consists of mats or rugs imported from Japan and used for floor

coverings. It was returned for duty at the rate of 30 per cent ad valorem under paragraph 273 of the tariff act of 1913, reading:

273. Carpets, carpeting, mats and rugs made of flax, hemp, jute, or other vegetable-fiber (except cotton). * * *.

The importers contend that these mats or rugs are manufactured from straw, either round or split, and are properly dutiable at 2½ cents per square yard under the provisions of paragraph 272, as follows:

272. Floor mattings, plain, fancy, or figured, including mats and rugs, manufactured from straw, round or split, or other vegetable substances, not otherwise provided for in this section, and having a warp of cotton, hemp, or other vegetable substances, including what are commonly known as China, Japan, and India straw matting. * * *.

The contention of the Government is that the straw composing these rugs had been manufactured or manipulated to such an extent that it had lost its identity as straw and had become a vegetable fiber before being woven into the mats or rugs.

The witnesses all agree that the component of chief value in these rugs is rice straw, or a substance derived from rice straw. The sole question, therefore, is whether this component in the form in which it appears in the merchandise is properly straw, round or split, or whether it has been so advanced that it is properly designated a fiber. The words "straw" and "fiber" are defined in the Standard Dictionary as follows:

Straw.—A stalk, stem, or piece of a stalk or stem, of various grains, especially wheat, rye, oats, barley, and buckwheat, less frequently of peas and beans; applied generally to a dry or ripened stalk.

Fiber.—A fine filament; a slender or threadlike component of a substance, as of wood, muscle, or spun glass.

The testimony shows that before weaving into the rugs the rice straw was crushed and twisted by machinery into a string or large cord, which is more nearly the size of a rope, and the rugs were then woven, using this straw cord as the weft thread, while a small cotton cord or thread was used for the warp. One of the witnesses stated that the straw is spun in this cord in the same manner as a fiber is spun in a string. After weaving, the rough edges of the rugs were bound with a cotton binding.

By unraveling the rugs and untwisting the straw cord or rope it can be seen that the entire stalk of the straw appears intact in the merchandise. It looks as if the straw had been put through some crushing process which bent it and split it up, but each individual straw is not entirely split or the fiber separated therefrom. This is clearly demonstrated by a visual and manual examination. Each joint in a single stalk is clearly defined and has not been split or sepa-

rated into filaments or thread-like components. Between the joints, where the straw was hollow and tender, the crushing operation has split the texture into slender threads or filaments, but at the joints, where the straw was hard and tough, the crushing operation has had no effect, and the straw appears in its natural or native state. If this were a vegetable fiber suitable for spinning or other use in the textile industry, the original form, size, and nature of the vegetable substance out of which it was made could not be determined by such a cursory physical examination, and, as pointed out in G. A. 4617 (T. D. 21861), the pith and other nonfibrous constituents would have been removed. In G. A. 4954 (T. D. 23144) the board held that straw is not a vegetable fiber. In G. A. 7469 (T. D. 33510), wherein the question at issue was the dutiable classification of certain trimmings made from split straws, some of which were about one-eighth to one-fourth of an inch in width and others of narrow widths, the latter being twisted or plaited, Judge Howell, speaking for the board, said:

> Whether articles, if there are any such known to commerce, made from the separated fibers of straw would be dutiable as articles composed of vegetable fibers we do not undertake to determine, but we are of the opinion that articles made of straw in its natural form and structure, like the articles in this case, can not properly be said to be made of vegetable fibers.

In paragraph 335 Congress has defined the meaning of the term "straw" as used in that paragraph to be limited to such "substances in their natural form and structure, and not the separated fiber thereof." It is thus apparent that it was the intention of Congress to consider a vegetable fiber as a filament which is separated from the other constituents in the straw. Such is the meaning of the term as commonly understood and as defined in the dictionaries.

In G. A. 7545 (T. D. 34304) the board determined the dutiable classification of certain flax straw which had been advanced in manufacture by passing through a machine which crushed and broke the stalks in much the same manner as the straw here in question has been treated. In that case the board held that the broken flax straw was dutiable as "flax straw" rather than as "tow of flax." Tow of flax is something which has reached the fiber stage, and from that decision we can mark the distinction between straw and fiber. The board said:

> It may be said that this straw is advanced in manufacture by the breaking of the fibers, but it is not manufactured into a different article. It is still flax straw, although it is broken, and since there is no specific or other provision for flax straw manufactured or advanced in manufacture, this broken flax straw must be still held dutiable under the provision for "flax straw."

In the case at bar the fiber is not separated from the straw and then made into the cord composing the rugs, but the straw itself is twisted or spun into the cord. It is apparent that, by the use of the words "round or split" in paragraph 272, Congress has recognized that the straw composing such rugs or mats may be advanced in condition from its natural form or structure without subjecting the rugs to a higher rate of duty. We are of opinion that the matting comprising illustrative Exhibit A is a good example of a fabric manufactured from round straw, and that the exhibit representing the merchandise in question is an example of a mat or rug manufactured from split straw. Prior to the enactment of the tariff act of 1913, the tariff laws contained no provision for mats and rugs manufactured from straw, and consequently such articles were uniformly classified and held dutiable under the provisions for "manufactures of straw" rather than as "mats and rugs made of flax, hemp, jute, or other vegetable fiber." See G. A. 4954 (T. D. 23144); Abstract 25327 (T. D. 31498); Abstract 25688 (T. D. 31624), etc.

The testimony shows that illustrative Exhibit A is a mat or rug made from Japanese matting. It appears to be the contention of the Government that the rugs or mats made from straw provided for in paragraph 272 are limited to those rugs in which the fabric is of the Chinese, Japanese, or India matting variety. We can not agree with this contention, however. The paragraph provides for "floor mattings * * * manufactured from straw, round or split, * * * *including* what are commonly known as China, Japan, and India straw matting." By the use of the word "including," which is a word of extension rather than of limitation, it is clear that Congress intended to include in this paragraph all floor mattings made from straw; not only those made from round straw or grass, such as Chinese, Japanese, and India mattings, but also those woven from split straw, using a warp of cotton, hemp, or other vegetable substance, such as we find in the merchandise before us. The same reasoning applies to rugs and mats, as Congress has seen fit to insert in this paragraph the expression "including rugs and mats." Furthermore, under the rule of *ejusdem generis*, the rugs in question would be dutiable under paragraph 272 because the fabric of which they are made possesses more of the characteristics of "matting manufactured from straw" than of "carpets or carpeting made of flax, hemp, jute, or other vegetable fiber."

We find that the rugs in question are manufactured from straw, and we hold the same dutiable at 2½ cents per square yard under paragraph 272 of said act.

The protest is sustained.

(T. D. 34821—G. A. 7611.)

Fustin—Extract of vegetable origin.

An azo compound of aniline and fustic extract, known as fustin, which is prepared by treating aniline to form diazo benzine sulphide, which is then united with the fustic extract, thereby forming a new compound, is dutiable as an "extract of vegetable origin suitable for dyeing, coloring, staining or tanning" under paragraph 22, act of 1909, and not as a coal-tar color under paragraph 15.

United States General Appraisers, New York, October 9, 1914.

In the matter of protest 682802 of Innis, Speiden & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers).

Brown, *General Appraiser:* The appraiser states that "the merchandise consists of azo compound of aniline and fustic extract, a coal-tar color." It was classified as a coal-tar color under paragraph 15, act of 1909, at 30 per cent, and it is claimed to be duitable under the first clause of paragraph 22 at ⅞ cent per pound as an extract of dyewood or of bark, such as is commonly used for dyeing or tanning, or under the last clause of said paragraph as an extract of vegetable origin suitable for dyeing, coloring, staining, or tanning, at 15 per cent.

The witness for the importers stated that the article in question, which is known as fustin No. 1, is used as a substitute for fustic extract; that it differs from fustic extract in that it contains a small percentage of azo benzine; that it is used for dyeing, being especially adapted to coloring wool and silk, while fustic extract is used for dyeing wool, leather, etc.; that fustic extract is yellow and this fustin is red. He was unable to say why the azo benzine was added or what was accomplished by its addition.

The Government chemist testified that he analyzed a sample of the merchandise in question; that it was made from fustic extract and diazo benzine; that diazo benzine when compounded with fustic extract forms a new compound, a definite dye, called wool yellow; that a chemical change takes place which changes the nature of the fustic extract. Further, that the dye in fustic extract is called macluran; that the addition of the diazo benzine transforms that into a new chemical compound, having a definite formula different from the other, so that the identity of the original fustic extract is lost in the new combination. On quantitative analysis he found 3½ per cent diazo benzine in this mixture. His report states that it is an azo compound of aniline and fustic extract; that aniline is derived from coal tar and is treated to form the diazo benzine sulphide, which is then united with the fustic extract.

The facts, as above stated, would seem to be sufficient to take this merchandise out of the first clause of paragraph 22 because it is no longer, strictly speaking, fustic extract or an extract or decoction

of dyewood. It has something added which changes its chemical formation and is presumably added for the purpose of improving its qualities or use, or, as the chemist says, it forms a new compound, a definite dye called wool yellow. At the same time the addition of 3½ per cent of azo benzine, which in turn comes in part from aniline, a coal-tar product, is hardly sufficient to transform it into a coal-tar color or dye. However, it would still remain an extract of vegetable origin suitable for dyeing, coloring, staining, or tanning, and the addition of the small amount of azo benzine, as above stated, would not take it out of the clause.

The article is clearly an extract of vegetable origin. See Industrial Chemistry by Rogers & Aubert (p. 760) and Wagner's Chemical Technology (Crookes & Fischer) (p. 522).

Therefore, the protest is sustained under the alternative claim for the last clause of paragraph 22, at 15 per cent ad valorem.

(T. D. 34822—G. A. 7612.)

Rotten fruit—Act of 1909.

1. Regulations of the Secretary of the Treasury.

Subsection 22 of section 28 of the tariff act of 1909 provides that "no allowance shall be made in the estimation and liquidation of duties for shortage or nonimportation caused by decay, destruction, or injury to fruit or other perishable articles * * * unless under regulations prescribed by the Secretary of the Treasury." Regulations issued in pursuance of such authority, unless unreasonable or in contravention of the statute itself, have the force and effect of law.

2. Time of Filing Proof—Limitation by Statute.

While the statute also provides that "proof to ascertain such destruction or nonimportation shall be lodged with the collector * * * within 10 days after the landing of such merchandise," it is silent as to the time and manner in which examination of the fruit is to be made for the purpose of determining the amount of rot. Impliedly Congress left this latter question a matter of regulation by the Secretary under the general authority quoted above.

3. Conditions Precedent to Right of Allowance.

In this case the regulations of the Secretary governing importations of lemons (T. D. 31699) limit the time within which sampling and examination are to be made to 96 hours after the arrival of the vessel. Hence, to be entitled to any relief an importer must comply with said regulations regarding the time and manner of examination, and have his proof filed with the collector within the time limited by the statute.—Vandegrift *v.* United States (3 Ct. Cust. Appls., 198; T. D. 32470); also United States *v.* Zito (3 ib., 209; T. D. 32531).

United States General Appraisers, New York, October 9, 1914.

In the matter of protests 672918, etc., of S. Amorosa & Co. et al. against the assessment of duty by the collector of customs at the port of Philadelphia.

Before Board 3 (Waite, Somerville, and Hay, General Appraisers).

Somerville, *General Appraiser:* The importations consist of lemons imported under the act of 1909. Allowance in duty is claimed

by the importers for shortage or nonimportation caused by decay, under the provisions of subsection 22 of section 28 of said act, which expressly provides that no such allowance shall be made unless under regulations prescribed by the Secretary of the Treasury, and that proof of such destruction or nonimportation shall be lodged with the collector of customs of the port where such merchandise has been landed within 10 days after the landing of such merchandise.

The regulations prescribed by the Secretary in pursuance of the above authority are contained in T. D. 31699, and, so far as pertinent, read as follows:

1. In order to obtain an allowance under the provisions of subsection 22 of section 28 of the tariff act of 1909 on account of shortage or nonimportation caused by decay, destruction, or injury to lemons imported in packages, the importers shall within 96 hours, exclusive of Sundays and legal holidays, after the arrival of the importing vessel, give notice in writing to the collector of customs of their intention to claim such allowance. * * *

2. The Government will adopt as its samples to be weighed, for the purpose of estimating the amount of rot in a given cargo, the same samples that the sellers expose as samples of the cargo for the purpose of sale, irrespective of the number or character of the samples, which sale samples must be selected in the presence of a customs officer and examined immediately thereafter and within the said 96 hours. In meritorious cases, however, and where the collector shall be satisfied of the bona fides of the importers, he may grant such reasonable extension of said period of 96 hours as may be necessary to complete the examination. Care shall be taken by the customs officers that only one set of samples for selling purposes be exposed. * * *

Most of the relevant facts have been stipulated herein, and, together with the record, show that the importing vessel arrived on June 4, 1912; that the lemons were landed between the hours of 2.30 p. m. on June 5 and 6 p. m. on June 6; that the merchandise was weighed on June 12; that examination to determine the amount of rot was made by the appraiser on June 14, on which day the merchandise was again weighed; that the amount of rot found by the Government officials in each instance is indicated by the difference between the two weighers' or surveyors' returns attached to each entry, one certificate being marked "before examination" and the other marked "after examination"; that the returns of the weigher showing the weights as found were filed in the office of the surveyor on June 24 and with the collector on June 25, 1912.

It appears that the importers gave written notice to the collector of their intention to claim allowance for rot within 96 hours after the arrival of the importing vessel, as required by said T. D. 31699. It also appears that before the expiration of the said 96 hours the importers filed an application with the collector, under paragraph 2 of said T. D. 31699, for an extension of the time within which to select selling samples and have an examination made, for the reason that the actual owners of the lemons resided in New York, and would be unable to select selling samples within the prescribed 96 hours. This

application was denied by the collector, as he did not consider he had authority under the said paragraph to extend the time of examination unless actual examination had been commenced within the 96 hours.

The collector, however, submitted the question to Assistant Secretary Curtis, who was in charge of the customs division of the Treasury Department, and he directed that the request of the importers to select samples, etc., within 10 days after arrival be granted. The examination for the purpose of ascertaining the amount of rot accordingly took place on June 14, as already stated. The weigher's returns, however, were not filed with the collector until June 25, which was considerably beyond the 10-day limit prescribed by the law within which proof to ascertain the destruction or nonimportation of fruit caused by decay must be lodged with the collector.

Later the Assistant Secretary of the Treasury instructed the collector not to make any allowance in those cases where the *examination* had not been made within the 96 hours limited by the regulations, in view of certain decisions of the Court of Customs Appeals, to which reference will again be made hereafter. The questions here involved are whether there was a proper compliance with the regulations of the Secretary of the Treasury in regard to the sampling and examination of the lemons for the purpose of ascertaining the percentage of decay, and whether such proof thereof was lodged with the collector of customs within 10 days after the landing of the merchandise as required by said subsection 22. If the requirements have been fulfilled in both respects, the importers are entitled to relief. A failure in either respect, however, would be a bar to any relief.

It is an elementary principle of customs law that regulations prescribed by the Secretary of the Treasury in pursuance of authority conferred upon him by statute have the force and effect of law, unless unreasonable or in contravention of the statute itself.

As to the first requisite above referred to, the record shows that while the lemons were landed on the 5th and 6th of June they were not sampled and examined for rot until June 14 following. It will be seen from the regulations of the Secretary of the Treasury quoted heretofore that such sampling and examination should take place within 96 hours after the arrival of the vessel. Clearly there was a failure of compliance with these regulations.

As to the second requisite, said subsection 22 of section 28 of the tariff act of 1909 provides, among other things, as follows:

* * * Proof to ascertain such destruction or nonimportation [of fruit or other perishable articles] shall be lodged with the collector of customs of the port where such merchandise has been landed, or the person acting as such, within 10 days after the landing of such merchandise. * * *

In this case the record fails to show that any proof was taken or lodged with the collector by the importers. The importers evidently chose to rely entirely on the examination made by the Government officers. The fact remains, however, that the weigher's returns, which contain the only evidence of the percentage of rot in the importations, were not filed with the collector until June 25, notwithstanding that the examination and a reweighing had been made on June 14. In this instance there was clearly a failure of compliance with the express provision of the law itself. For this reason alone the protests are untenable. That being so, we find it therefore unnecessary to pass upon the question whether the Secretary of the Treasury had the right to waive, modify, or change a general regulation promulgated by him or to make a special regulation for a particular importer in a particular case, and, if so, whether he could thereafter lawfully repudiate such action.

As to the question of compliance with the regulations of the Secretary made under said subsection 22, the subject was fully considered by the Court of Customs Appeals in Vandegrift *v.* United States (3 Ct. Cust. Appls., 198; T. D. 32470). The court in its opinion used the following language:

> * * * The regulations adapted to secure such allowance are to be made by the Secretary of the Treasury. He has performed his duty by prescribing that whenever an importer intends to claim such allowance he shall within 48 hours after the arrival of the importing vessel give notice that he so intends. This provision manifestly is both salutary and reasonable. The importer is thereby afforded time to investigate and decide whether or not the condition of the merchandise probably warrants the claim. After the notice, the Government and importer both have ample time for their representatives, working either separately or together, to inspect the merchandise and determine its condition, so that if agreement on the subject be not reached the results thereof properly proven can be returned to and filed with the collector.
>
> Now, while Congress delegated to the Secretary the authority to make regulations upon the subject, it has seen fit to provide in plain language that "proof to ascertain such destruction or nonimportation shall be lodged with the collector of customs * * * within 10 days after the landing of the merchandise."

In United States *v.* Zito (3 Ct. Cust. Appls., 209; T. D. 32531) the court, in construing the same statute, makes the following observation:

> Moreover, the statute of 1909, in so far as the 10-day limitation is concerned, is a rule of limitation and not of evidence. It expresses the period within which the importer shall not only make his examination but present his proof. The character of the examination and time in which the same may be made are not fixed by the terms of the act, but are probably made the subject of such reasonable regulation as may be promulgated by the Secretary of the Treasury. In this view it can not be said that that act either prescribes or reflects a reasonable period within which such examination shall be made.

In the case at bar no contention has been made that the regulation of the Secretary requiring lemons to be sampled and examined within

96 hours after arrival is unreasonable or unlawful. The case otherwise is governed by the decisions cited, *supra*, on the authority of which we overrule the protests and affirm the decision of the collector in each instance.

(T. D. 34823—G. A. 7613.)

Tucked wearing apparel.

Shirt bosoms made from tuckings, being more specifically provided for as "Clothing * * * and articles of wearing apparel of every description, composed of cotton or other vegetable fiber, * * * made up or manufactured, wholly or in part" than as "articles made wholly or in part of tuckings," are dutiable at 30 per cent ad valorem under paragraph 256, act of 1913, and not at 60 per cent ad valorem under paragraph 358.

United States General Appraisers, New York, October 9, 1914.

In the matter of protest 757652 of Snow's U. S. Sample Express Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

COOPER, *General Appraiser:* The appraiser reports that "the merchandise consists of shirt bosoms composed of cotton or flax, ornamented with loom-woven tucks, tuckings chief value, returned for duty as cotton or flax tucked wearing apparel at 60 per cent ad valorem, paragraph 358, act of 1913." Protestants rely upon the claim that the articles are dutiable under paragraph 256, reading:

256. Clothing, ready-made, and articles of wearing apparel of every description, composed of cotton or other vegetable fiber, or of which cotton or other vegetable fiber is the component material of chief value, or of cotton or other vegetable fiber and india rubber, made up or manufactured, wholly or in part, by the tailor, seamstress, or manufacturer, and not otherwise specially provided for in this section, 30 per centum ad valorem; shirt collars and cuffs of cotton, not specially provided for in this section, 30 per centum ad valorem.

An examination of paragraph 358 fails to disclose any provision for "cotton or flax tucked wearing apparel," mentioned in the appraiser's report. The paragraph contains a provision for "wearing apparel * * * made wholly or in part of lace" and "wearing apparel * * * embroidered in any manner by hand or machinery * * * tamboured, appliquéd, or scalloped," but nowhere do we find a provision for tucked wearing apparel. The appraiser has not expressed himself clearly and with certainty in his return, and he may have intended to say that he classified the merchandise under the following provision:

358. * * * Edgings, insertings, galloons, nets, nettings, veils, veilings, neck rufflings, ruchings, tuckings, flouncings, flutings, quillings, ornaments; * * * and articles made in whole or in part of any of the foregoing fabrics or articles.

The record in protest 734955 is incorporated and made a part of the record in this case. From an examination of the sample in evidence, we are able to determine that the articles in question are shirt bosoms, made in chief value of a tucked cotton material. Shirts are clothing and wearing apparel, and the shirt bosoms in question are partly manufactured wearing apparel (G. A. 607, T. D. 11324; G. A. 981, T. D. 12119; In re Mills, 56 Fed., 820), and would clearly come within the description of "clothing * * * and articles of wearing apparel of every description, composed of cotton or other vegetable fiber * * * made up or manufactured, wholly or in part * * *," and we are called upon to decide whether or not that provision is more specific than "articles made in whole or in part of tuckings."

In G. A. 7597 (T. D. 34755), wherein we had under consideration the dutiable classification of a dress suit having a braid sewed to the outside seam of the trouser legs, we held that the provision for "clothing, ready made * * * composed wholly or in chief value of wool," was more specific than "articles made * * * in part of braid," in spite of the fact that the provision for "clothing" in paragraph 291 is limited by the phrase "not specially provided for in this section," while the provision for "articles * * * made in part of braid" is not so limited. In that case, however, the amount of braid on the trousers was insignificant as compared with the value of the material composing the suit, while here the shirt bosoms are in chief value of tuckings, and there would seem to be some reason for imposing duty at 60 per cent ad valorem on these articles, because the material out of which they are chiefly made is subject to duty at that rate. It is apparent that, in the absence of the words "not otherwise specially provided for in this section" in paragraph 256, the provision for "clothing" would be more specific. It is well settled, however, that these words are not controlling in the case of an *eo nomine* provision when compared with a general provision in the law. United States *v.* Schwarz (140 Fed., 302), Arthur *v.* Lahey (96 U. S., 112), United States *v.* Lorsch (158 Fed., 398), United States *v.* Reiss (136 Fed., 741), Brennan *v.* United States (136 Fed., 743), United States *v.* Borgfeldt (1 Ct. Cust. Appls., 370; T. D. 31455). Upon these authorities it would seem that the absence of the words "not specially provided for" from the general provisions of paragraph 358 is not significant.

Moreover, it is a well-established rule that where statutory language has been construed by the courts and there is a reenactment of the statute in substantially the same language, it is presumed that Congress adopted the construction which had been placed upon the terms there employed by the courts. Rossman *v.* United States (1 Ct. Cust. Appls., 280; T. D. 31321); Lang *v.* United States (4 Ct.

Cust. Appls., 464; T. D. 33881). In G. A. 5357 (T. D. 24509) and Abstract 21440 (T. D. 29848) the board held that ladies' cotton collars made of small tuckings were more specifically provided for under the act of 1897 as "clothing and articles of wearing apparel of every description, including neckties and neckwear, composed of cotton or other vegetable fiber * * * not otherwise specially provided for" than as "articles made wholly or in part of * * * tuckings * * * not elsewhere specially provided for." With the exception of the phrase "not elsewhere specially provided for" in the provision last mentioned, the paragraphs under consideration in that case were almost identical with these here in question, and the board held that the provision for "clothing" was the more specific. In the tariff act of 1909, Congress enacted paragraph 349 in the place of paragraph 339 of the act of 1897. The provision for "articles made wholly or in part of tuckings" was eliminated, and the following proviso was added:

Provided, That no article composed wholly or in chief value of one or more of the materials or goods specified in this paragraph shall pay a less rate of duty than the highest rate imposed by this section upon any of the materials or goods of which the same is composed.

By virtue of this proviso, under the act of 1909, articles of wearing apparel made in chief value of tuckings were held dutiable at 60 per cent ad valorem. (See Abstract 28818 (T. D. 32618), covering tucked shirt bosoms.) Now, in the tariff act of 1913 Congress has again enacted the provisions formerly used in the act of 1897, but the Government contends that the words now used ("articles made wholly or in part of tuckings") should be construed to mean the same as those in the proviso in paragraph 349 of the act of 1909. As stated by Judge De Vries in United States *v.* Marsching (1 Ct. Cust. Appls., 216; T. D. 31257), "we do not think that in a case like this where the essential words supporting the construction contended for have been expressly omitted by Congress, the courts can by any rule or method of construction read back into the act such words." In the act of 1913, Congress eliminated the proviso, above quoted, from the law and inserted in its place the provisions relating to this merchandise which were used in the tariff act of 1897, and, by thus restoring the words formerly construed, we must assume that Congress intended that the provisions enacted should cover the same class of goods under the tariff act of 1913 that they were held to cover under the tariff act of 1897.

Furthermore, Congress has in the present act enacted a new provision, in paragraph 256, for "shirt collars and cuffs of cotton." Shirt bosoms are *ejusdem generis* with "shirt collars and cuffs" and under the doctrine of *noscitur a sociis*, they are subject to the duty provided for those articles if by any normal method of statutory inter-

pretation they can be held subject to classification in the same paragraph.

For the reasons above given, we hold that the shirt bosoms in question are more specifically provided for as "clothing * * * and articles of wearing apparel of every description, composed of cotton or other vegetable fiber * * * made up or manufactured wholly or in part * * * and not otherwise specially provided for" in paragraph 256, than as "articles made in whole or in part of tuckings" under paragraph 358. The protest claiming the merchandise dutiable at 30 per cent ad valorem under paragraph 256 is sustained.

(T. D. 34824.)

Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, Sommerville, and Hay.

BEFORE BOARD 1, OCTOBER 5, 1914.

No. 36650.—PROTESTS OVERRULED.—Protest 733005 of McLaughlin & Freeman (Boston). Opinion by McClelland, G. A.

Protest unsupported; overruled.

No. 36651.—BEADED TRIMMINGS.—Protest 737479 of Julius Loewenthal & Co. (New York).

Tunics composed of silk or cotton net appliquéd with beads were held properly classified as net trimmings, appliquéd, under paragraph 358, tariff act of 1913, and not dutiable as articles in chief value of beads (par. 333), as claimed.

SULLIVAN, *General Appraiser:* * * * The contention that it is a beaded article, and thereby governed by paragraph 333, is not sustained by the testimony. In a beaded article, as we understand it, the beads are not applied, but are woven into the article and become part of it. * * *

Here we have the distinction between a beaded article and one embroidered or appliquéd. In the beaded article the beads are woven into the article while being manufactured and become a part of it without the addition of other threads. In the article in dispute the netting is first taken, a design is then formed of beads, and then by cotton thread the beads are applied to the netting. In that manner we have the merchandise now under classification. The statute relied on expressly exempts this class of merchandise from its terms. Paragraph 333 states:

> * * * Curtains and other articles *not embroidered nor appliquéd* and not specially provided for in this section, composed wholly or in chief value of beads or spangles made of glass or paste, gelatin, metal, or other material, 50 per centum ad valorem. [The italics are ours.]

To classify an article as beaded under this section it must not be embroidered nor appliquéd. The testimony shows the article is appliquéd; therefore it is not a beaded article within the meaning of this section and could not be classified thereunder. Paragraph 358, under which it was classified by the collector, in more clear and definite terms applies to it than does paragraph 333. That paragraph of the statute so far as applicable is as follows:

> 358. Laces, * * * *wearing apparel*, * * * and all articles or fabrics embroidered in any manner by hand or machinery, whether with a plain or fancy

initial, monogram, or otherwise, or tamboured, *appliquéd*, or scalloped by hand or machinery, any of the foregoing by whatever name known; * * * all of the foregoing, of whatever yarns, threads, or filaments composed, 60 per centum ad valorem. [The italics are ours.]

It seems to us without question that this merchandise can be described as an appliquéd article of wearing apparel. The undisputed facts justify such classification; but, whether it is appliquéd or not, it could not be classified under paragraph 333 as a beaded article.

No. 36652.—PROTESTS ABANDONED.—Protests 424564–32702, etc., of Heath & Milligan Manufacturing Co. et al. (Chicago).

Protests abandoned.

BEFORE BOARD 2, OCTOBER 5, 1914.

No. 36653.—PROTESTS OVERRULED.—Protests 383927, etc., of Knauth, Nachod & Kuhne et al. (New York). Opinion by Cooper, G. A.

Protests unsupported; overruled.

BEFORE BOARD 3, OCTOBER 5, 1914.

No. 36654.—FLAX CARD WASTE—PAPER STOCK.—Protests 653444, etc., of Charles H. Wood (Boston). Opinion by Somerville, G. A.

Merchandise classified as waste under paragraph 479, tariff act of 1909, was claimed entitled to free entry as waste used chiefly for paper making (par. 644). Protests sustained in part. Abstract 28088 (T. D. 32396) and G. A. 7450 (T. D. 33290) followed.

No. 36655.—COVERINGS OF LIQUIDS AND SEMILIQUIDS.—Protests 368790, etc., of V. Savarese & Bros. et al. (New York). Opinion by Hay, G. A.

United States *v.* Peabody (3 Ct. Cust. Appls., 130; T. D. 32383) followed as to coverings of liquids and semiliquids.

No. 36656.—WOOD PULP.—Protest 660013 of T. D. Downing & Co. (New York). Opinion by Hay, G. A.

On the authority of the American Express Co. *v.* United States (4 Ct. Cust. Appls., 146; T. D. 33434) certain wood pulp was held entitled to free entry.

BEFORE BOARD 1, OCTOBER 7, 1914.

No. 36657.—TANNED SHEEPSKINS.—Protest 732961 of Arnhold, Karberg & Co. (New York). Opinion by McClelland, G. A.

Sheepskins, tanned and dressed, to be used for baby carriage robes, classified as dressed furs on the skin under paragraph 348, tariff act of 1913, were claimed free of duty under paragraph 650. Protest overruled, the board holding the skins in question to have been prepared by deliberate processes for use as fur robes. United States *v.* Heckman (1 Ct. Cust. Appls., 272; T. D. 31318), Gross *v.* United States (1 Ct. Cust. Appls., 321; T. D. 31410), and Revillon Frerés *v.* Unites States (2 Ct. Cust. Appls., 209; T. D. 31948) followed.

No. 36658.—TOILET SOAP—MEDICATED SOAP.—Protest 721870 of F. E. Warner (Buffalo). Opinion by McClelland, G. A.

Merchandise classified as medicated soap was held dutiable as toilet soap under the provisions of paragraph 69, tariff act of 1909, as claimed.

No. 36659.—Fur Waste—Glue Stock.—Protest 482825 of American Glue Co. (New York). Opinion by McClelland, G. A.

Fur cuttings, classified as waste under paragraph 479, tariff act of 1909, was held entitled to free entry as glue stock (par. 584). American Glue Co. *v.* United States (5 Ct. Cust. Appls., —; T. D. 34006) followed.

No. 36660.—Protests Overruled.—Protests 725755, etc., of Samuel W. Trost Co. (Cleveland), protests 729763, etc., of W. White (Detroit), and protests 735886, etc., of Castle, Gottheil & Overton et al. (New York). Opinions by McClelland, G. A.

Protests unsupported; overruled.

No. 36661.—Sapphire Blanks.—Protest 553285-38619 of E. Staehli (Chicago), and protests 641871, etc., of the General Electric Co. (New York). Opinions by Sullivan, G. A.

On the authority of United States *v.* General Electric Co. (4 Ct. Cust. Appls., 287; T. D. 33494) sapphire blanks classified under paragraphs 112 and 481, tariff act of 1909, were held dutiable under paragraph 95. Protests sustained in part.

No. 36662.—Rosaries.—Protest 614905 of Chas. H. Wyman & Co. (St. Louis). Opinion by Sullivan, G. A.

Rosaries classified as manufactures of metal under paragraph 199, tariff act of 1909, were held dutiable according to the component material of chief value under paragraphs 463 and 215, respectively. G. A. 7053 (T. D. 30731) followed. Protests sustained in part.

No. 36663.—Jewelry.—Protests 210848, etc., of O. G. Hempstead & Son (Philadelphia). Opinion by Sullivan, G. A.

Articles commonly known as jewelry were held properly classified under paragraph 434, tariff act of 1897.

No. 36664.—Protests Overruled.—Protest 613578-41525 of Marshall Field & Co. (Chicago), protests 186351, etc., of Abraham & Straus et al., protest 445334 of of M. Goldberg's Sons, and protest 382713 of Pitt & Scott (New York), and protests 702328, etc., of the Bausch & Lomb Optical Co. (Rochester). Opinions by Sullivan, G. A.

Protests unsupported; overruled.

No. 36665.—Wool Grease.—Protests 687205, etc., of Marden, Orth & Hastings (Boston). Opinion by Brown, G. A.

A commodity classified as wool grease under paragraph 290, tariff act of 1909, was claimed free of duty as grease for stuffing leather (par. 580). Protests overruled. United States *v.* Klipstein (5 Ct. Cust. Appls., —; T. D. 34003) noted.

No. 36666.—Protests Abandoned.—Protests 626046, etc., of American Express Co. et al. (Boston et al.).

Protests abandoned.

Before Board 2, October 7, 1914.

No. 36667.—Books in Foreign Languages.—Protest 728092 of Geo. E. Stechert & Co. (New York). Opinion by Fischer, G. A.

Manuals of logarithms classified under paragraph 416, tariff act of 1909, were held entitled to free entry as books printed chiefly in languages other than English (par. 518). Abstract 34966 (T. D. 34247) followed.

No. 36668.—Cushions for Needle-Threading Machines.—Protest 718347 of Durbrow & Hearne Manufacturing Co. (New York). Opinion by Cooper, G. A.

Wicks or needle cushions to be placed in wooden holders for use on automatic needle-threading machines, composed of cotton yarn covered with two layers of cotton woven thereon, forming a cylinder about one-half inch in diameter and 17½ inches in length, classified as cotton cord under paragraph 349, tariff act of 1909, were held dutiable as manufactures of cotton (par. 332). Abstract 34297 (T. D. 34000) followed.

No. 36669.—Spindle Banding.—Protests 694133, etc., of the Cleveland Worsted Mills Co. (Cleveland). Opinion by Cooper, G. A.

Merchandise classified under paragraph 349, tariff act of 1909, was held dutiable as spindle banding (par. 330). G. A. 7492 (T. D. 33731) followed.

Before Board 3, October 7, 1914.

No. 36670.—Sweetened Biscuits.—Protest 734484 of M. Furuya & Co. (Seattle). Opinion by Waite, G. A.

Sweet cakes classified under paragraph 194, tariff act of 1913, found not to contain confectionery, nuts, etc., were held entitled to free entry as biscuits not specially provided for (par. 417).

No. 36671.—Artistic Antiquities.—Protest 729530 of John W. Pepper (Philadelphia). Opinion by Waite, G. A.

Certain articles were claimed entitled to free entry as artistic antiquities under paragraph 717, tariff act of 1909. Protest sustained as to a bronze temple bell.

No. 36672.—Wood Pulp and Paper.—Protests 607176-3975, etc., of the Texas & Pacific Railway Co. (New Orleans), and protest 701451 of T. D. Burns (Newport, Vt.). Opinions by Somerville, G. A.

American Express Co. *v.* United States (4 Ct. Cust. Appls., 146; T. D. 33434) and Cliff Paper Co. *v.* United States (4 Ct. Cust. Appls., 186; T. D. 33435) followed as to wood pulp and paper.

No. 36673.—Burlap Bags—Paper Stock.—Protest 726217 of W. White (Port Huron). Opinion by Somerville, G. A.

Merchandise classified as new jute bags, printed, under paragraph 358, tariff act of 1909, was claimed entitled to free entry as paper stock (par. 644). Protest overruled.

No. 36674.—Protests Overruled.—Protest 725801 of German Consolidated Newspaper Co. (Cleveland). Opinion by Somerville, G. A.

Protest unsupported; overruled.

Before Board 1, October 9, 1914.

No. 36675.—Dogskin Mats.—Protest 744945 of J. Winograd (New York). Opinion by McClelland, G. A.

Merchandise classified as furs dressed on the skin was held dutiable as dogskin mats under the provisions of paragraph 348, tariff act of 1913. G. A. 7569 (T. D. 34493) followed.

No. 36676.—Sheepskins—Skivers.—Protest 720834 of Wm. Taaffe Tanning Co. (San Francisco). Opinion by McClelland, G. A.

So-called "crust skivers," classified as sheepskins dressed and finished under paragraph 451, tariff act of 1909, were claimed dutiable under paragraph 450. Protest overruled. Tilge *v.* United States (2 Ct. Cust. Appls., 129; T. D. 31662) followed.

No. 36677.—Diced Leather.—Protests 712757, etc., of R. F. Downing & Co. et al. (New York). Opinion by McClelland, G. A.

On the authority of United States *v.* Brown (5 Ct. Cust. Appls., —; T. D. 34380), diced leather was held not subject to additional duty under paragraph 451, tariff act of 1909.

No. 36678.—Leather Strips.—Protest 709141 of A. G. Pritchard & Co. (New York). Opinion by McClelland, A. G.

Leather strips, beveled at the ends, classified as manufactures of leather under paragraph 452, tariff act of 1909, were held dutiable at 15 per cent ad valorem under paragraph 451. Michelin *v.* United States (5 Ct. Cust. Appls., —; T. D. 34131), United States *v.* Ringk (3 Ct. Cust. Appls., 353; T. D. 32908), and Sherrard *v.* United States 3 Ct. Cust. Appls., 377; T. D. 32966) followed.

No. 36679.—Grain Leather—Sealskins—Japanese Cow Hides.—Protests 427966, etc., of L. F. Robertson & Sons (New York). Opinion by McClelland, G. A.

Grain leather was held dutiable at 7½ per cent ad valorem under paragraph 450, tariff act of 1909, as claimed. Protests overruled as to sealskins and Japanese cow hides classified under paragraph 451. Kaufmann *v.* United States (5 Ct. Cust. Appls., —; T. D. 34167), and United States *v.* Robertson (1 Ct. Cust. Appls., 379; T. D. 31458) followed.

No. 36680.—Chamois Skins.—Protests 702359, etc., of The Alpha Leather Co. et al. (Philadelphia) Opinion by McClelland, G. A.

On the authority of G. A. 7425 (T. D. 33143) chamois skins were held properly classified at 20 per cent ad valorem under paragraph 451, tariff act of 1909.

No. 36681.—Grass Mats.—Protest 706733 of A. L. Tuska, Son & Co. (New York). Opinion by McClelland, G. A.

Mats made of grass, classified as cocoa mats under paragraph 466, tariff act of 1909, were held dutiable as manufactures of grass (par. 463) as claimed.

No. 36682.—Berry Baskets.—Protest 738561 of Newmark Grain Co. (Los Angeles). Opinion by McClelland, G. A.

Thi pieces of wood bent into the form of small baskets designed to hold a quart of berries, each having a strip of metal crimped around the top, were held properly classified as baskets in chief value of wood under paragraph 175, tariff act of 1913.

No. 36683.—Soap Powder—Chemical Compound.—Protest 745795 of Snow's U. S. Sample Express Co. (New York). Opinion by McClelland, G. A.

Soap powder classified as a chemical compound under paragraph 17, tariff act of 1913, was held dutiable under the specific provision for soap powder (par. 66). Abstract 34103 (T. D. 33913) followed, and Abstract 35685 (T. D. 34468) cited.

No. 36684.—Olive Oil in Tins.—Protest 609836–41434 of John Papadogiani (Chicago). Opinion by McClelland, G. A.

United States *v.* Moos (5 Ct. Cust. Appls., —; T. D. 34528) followed as to olive oil in tins.

No. 36685.—Protests Overruled.—Protests 708790, etc., of Hawley & Letzerich et al. (Galveston et al.), and protest 729936 of A. B. Fasola & Co., protests 744916, etc., of Perry, Ryer & Co. et al., and protest 642726 of Saks & Co. (New York). Opinions by McClelland, G. A.

Protests unsupported; overruled.

No. 36686.—Paste Articles—Jet Combs.—Protests 290376, etc., of J. & H. Rosenberg (New York). Opinion by Sullivan, G. A.

Jet combs classified as articles in chief value of cut glass under paragraph 100, tariff act of 1897, were held dutiable as manufactures of paste (par. 112). G. A. 6995 (T. D. 30444) followed.

No. 36687.—Jewelry—Metal Slides.—Protests 534813, etc., of B. Altman & Co. et al., and protests 644821, etc., of Royal Jewelry Manufacturing Co. et al. (New York). Opinions by Sullivan, G. A.

Cohn *v.* United States (4 Ct. Cust. Appls., 378; T. D. 33536) followed as to articles commonly or commercially known as jewelry. Slides or buckles composed of brass washed with gold were held dutiable as manufactures of metal under paragraph 199, tariff act of 1909. Protests sustained in part.

No. 36688.—Celluloid Bracelets—Jewelry.—Protests 660434, etc., of B. Illfelder & Co. et al. (New York). Opinion by Sullivan, G. A.

Celluloid bracelets were held dutiable as jewelry under paragraph 448, tariff act of 1909. United States *v.* Kraemer (5 Ct. Cust. Appls., —; T. D. 34474) followed.

No. 36689.—Shell Cameos.—Protests 495302, etc., of A. Lorsch & Co. (New York). Opinion by Sullivan, G. A.

Pieces of shell cut in cameo form, classified as manufactures of shell under paragraph 464, tariff act of 1909, were held dutiable as cameos (par. 449). G. A. 6936 (T. D. 30068) followed.

No. 36690.—Protests Overruled.—Protests 386736, etc., of the A. Bader Co. et al., and protests 324817, etc., of Geo. Borgfeldt & Co. (New York). Opinions by Sullivan, G. A.

Protests unsupported; overruled.

No. 36691.—Wool Machine Pads.—Protest 734947 of P. H. Petry Co. (New York). Opinion by Brown, G. A.

Camel's-hair filter pads and blown-glass tubes used in cocoa manufacturing machines, classified under paragraph 378, tariff act of 1909, and paragraph 84, tariff act of 1913, were claimed dutiable as nonenumerated articles (par. 385). Protest overruled.

No. 36692.—Hyposulphite of Soda.—Protests 751864, etc., of Farbwerke Hoechst Co. (New York). Opinion by Brown, G. A.

Protests sustained claiming hyposulphite of soda dutiable under paragraph 57, tariff act of 1913, rather than as a chemical salt (par. 3), as classified.

No. 36693.—Fish in Tins.—Protests 518446, etc., of F. L. Roberts & Co. et al. (Boston et al.). Opinion by Brown, G. A.

G. A. 7380 (T. D. 32680) and United States *v.* Miller (5 Ct. Cust. Appls., —; T. D. 34443) followed as to fish in tins.

BEFORE BOARD 2, OCTOBER 9, 1914.

No. 36694.—BOOK COVERS LITHOGRAPHICALLY PRINTED.—Protest 731056 of Bamberger-Stern Co. (New York). Opinion by Fischer, G. A.

Book covers classified as manufactures in chief value of surface-coated paper under paragraph 411, tariff act of 1909, were held dutiable as lithographically printed (par. 412).

No. 36695.—BOTTLE-CAP MACHINES—MACHINE TOOLS.—Protest 602032 of Snow's U. S. Sample Express Co. (New York.) Opinion by Fischer, G. A.

Machines for making bottle caps, classified as manufactures of metal under paragraph 199, tariff act of 1909, were held dutiable as machine tools (par. 197). G. A. 7559 (T. D. 34413) followed.

No. 36696.—CASTINGS, ADVANCED.—Protest 733514 of F. B. Vandegrift & Co. (Philadelphia). Opinion by Fischer, G. A.

Certain merchandise classified under paragraph 199, tariff act of 1909, was held dutiable as castings advanced (par. 147). United States *v.* Leigh (4 Ct. Cust. Appls., 304; T. D. 33517) followed.

No. 36697.—KNIVES FOR LEATHER-CUTTING MACHINES.—Protest 733369 of Geo. H. Diehl, jr. (New York). Opinion by Fischer, G. A.

Skiving knives of metal, classified under paragraph 167, tariff act of 1913, were claimed entitled to free entry as parts of shoe machinery (par. 441). Protest overruled, the board finding the knives in question used by bookbinders and manufacturers of leather goods generally, as well as by shoemakers.

No. 36698.—METAL SCREW COVERS FOR JARS.—Protests 737056, etc., of F. B. Vandegrift & Co. (New York). Opinion by Fischer, G. A.

Metal screw covers for jars, classified as bottle caps under paragraphs 196 and 164, tariff acts of 1909 and 1913, respectively, were held dutiable as manufactures of metal. G. A. 7555 (T. D. 34376) followed.

No. 36699.—PROTESTS OVERRULED.—Protest 733513 of F. B. Vandegrift & Co. (Philadelphia). Opinion by Fischer, G. A.

Protest unsupported; overruled.

No. 36700.—STRAW SLIPPERS.—Protests 557284, etc., of Quong Yee Wo et al. (New York). Opinion by Cooper, G. A.

Chinese slippers composed of straw, leather, and silk, classified as silk wearing apparel under paragraph 402, tariff act of 1909, and found to be composed in chief value of straw, were held dutiable under paragraph 463. G. A. 7458 (T. D. 33388) followed. Protests sustained in part.

No. 36701.—PROTESTS OVERRULED.—Protest 733353 of Baker, Moise & Co. (Galveston). Opinion by Cooper, G. A.

Protest unsupported; overruled.

BEFORE BOARD 3, OCTOBER 9, 1914.

No. 36702.—PROTESTS OVERRULED.—Protests 697692, etc., of M. J. Corbett & Co. et al., and protest 742220 of Kingsford Foundry & Machine Works (New York). Opinions by Hay, G. A.

Protests unsupported; overruled.

(T. D. 34825.)

Mail importations.

Parcel-post convention with French Guiana.

TREASURY DEPARTMENT, *October 12, 1914.*

To officers of the customs and others concerned:

The department is advised by the Postmaster General of the conclusion of a parcel-post convention between the United States and French Guiana, which was ratified on September 14, 1914, and will become effective on November 1, 1914.

The provisions of chapter 8 of the customs regulations of 1908, as amended by T. D. 29826 of June 9, 1909, T. D. 29881 of June 21, 1909, T. D. 31466 of April 5, 1911, T. D. 33011 of December 12, 1912, and T. D. 33024 of December 18, 1912, apply to this convention. The limit of weight of packages received thereunder is 11 pounds. Parcels must not exceed the following dimensions: Greatest length in any direction, 3 feet 6 inches; greatest length and girth combined, 6 feet. There is no limit as to value.

ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 34826.)

Correspondence with consuls.

All communications to consulates should be addressed to the principal officer.

TREASURY DEPARTMENT, *October 13, 1914.*

To collectors and other officers of the customs:

It has been brought to the attention of the department that sometimes officers of the customs address communications to consular agents and deputy consuls. Officers of the customs are, therefore, instructed that all communications to the consular officers should be addressed to the consul general or other principal officer at the consulate when it is necessary to correspond directly with consular officers.

(102899.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 34827.)

Mail importations.

Reports to Chief Post Office Inspector of failure to make returns.

TREASURY DEPARTMENT, *October 13, 1914.*

To collectors of customs and others concerned:

Article 821 of the Customs Regulations of 1908 is hereby amended by the addition of the following paragraph:

Customs officers will advise the Chief Post Office Inspector promptly in each instance when a complaint concerning the failure to make customs collections has been satis-

factorily adjusted, in order that the investigation by the Post Office Department may be discontinued.

(60935.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 34828.)

Drawback on cravenette-proofed or waterproofed fabrics and clothing.

Drawback on imported fabrics and clothing cravenette-proofed or waterproofed by the Cravenette Co., U. S. A., of Hoboken, N. J., for the account of their customers.

TREASURY DEPARTMENT, *October 13, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on imported worsteds, woolens, woolen and cotton cloth, worsteds and cotton cloth and similar imported fabrics, and on imported clothing exported after having been cravenette-proofed or waterproofed by the Cravenette Co., U. S. A., of Hoboken, N. J.

A manufacturing record shall be kept of the Cravenette Co., U. S. A., which will show in the case of each lot of articles cravenette-proofed or waterproofed for the account of their customers the lot number and dates of receipt and return of each lot of articles processed, the name and address of the customer for whom processed, and the number of articles of each kind in the lot. In the case of piece goods, the records shall also show the serial number of each piece, the character of the goods, and the yardage thereof, both before and after being processed.

A record shall be kept by the customer, which shall show the usual import data covering each lot of imported materials or articles processed for his account, the date on which sent to the Cravenette Co., U. S. A., the date of return thereof, and the number of articles of clothing or pieces of goods of each kind in the lot. In the case of imported piece goods, the records shall also show the serial number of each piece, the character of the cloth and the yardage thereof, both before and after being processed. Sworn abstracts from such records shall be filed with each drawback entry.

In the case of imported piece goods, the allowance shall not exceed the number of yards of imported material used in the manufacture of the exported cravenette-proofed or waterproofed cloth, as shown by the sworn abstracts prescribed above. In the case of clothing, the allowance shall not exceed one imported article for each similar cravenette-proofed or waterproofed article exported.

The sworn statement of the Cravenette Co., U. S. A., dated September 22, 1914, is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(93859-1.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34829.)

Drawback on cocaine hydrochloride.

Drawback on cocaine hydrochloride manufactured by Merck & Co., of New York City, with the use of imported cocaine leaves.

TREASURY DEPARTMENT, *October 14, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on cocaine hydrochloride manufactured by Merck & Co., of New York City, from imported coca leaves.

A manufacturing record shall be kept, which shall show, in addition to the usual import data, the lot number and date of manufacture of each lot of cocaine hydrochloride manufactured for export with benefit of drawback, the quantity of imported coca leaves used, and the quantity of cocaine hydrochloride obtained. A sworn abstract from such manufacturing record shall be filed with each drawback entry.

The allowance shall not exceed the quantity of imported coca leaves used in the manufacture of the exported cocaine hydrochloride as shown by the sworn abstract from the manufacturing record.

The sworn statement of the manufacturers, dated October 3, 1914, is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(102724.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34830.)

Drawback on Burning Colza Oil.

Drawback on Burning Colza Oil manufactured by the Union Petroleum Co., of Philadelphia, Pa., with the use of imported rapeseed oil.—T. D. 34562 of June 17, 1914, is hereby revoked.

TREASURY DEPARTMENT, *October 14, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on a preparation designated as "Burning Colza Oil," manufactured by the Union Petroleum Co., of Philadelphia, Pa., with the use of rapeseed oil.

A manufacturing record shall be kept, which will show, in addition to the usual import data, the lot number and date of manufacture of each lot of Burning Colza Oil manufactured for export with benefit of drawback and the quantities of imported rapeseed oil and other oils appearing therein. An abstract from such manufacturing record shall be filed with each drawback entry.

The allowance shall not exceed the quantity of imported rapeseed oil appearing in the exported Burning Colza Oil, as shown by the sworn abstract from the manufacturing record. The sworn statement of the manufacturers, dated October 2, 1914, is transmitted herewith for filing in your office.

T. D. 34562 of June 17, 1914, is hereby revoked.

Respectfully, ANDREW J. PETERS,
(36693.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Philadelphia, Pa.*

(T. D. 34831.)

Drawback on cotton piece goods.

Drawback on dyed cotton piece goods produced by the Pond Lily Co., of New Haven, Conn., from cotton piece goods imported in the gray for the account of Stavert, Zigamala & Co., of New York City, and others.

TREASURY DEPARTMENT, *October 14, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on cotton piece goods imported in the gray and dyed by the Pond Lily Co., of New Haven, Conn., for the account of Stavert, Zigamala & Co., of New York City, and others.

A manufacturing record shall be kept by the Pond Lily Co., which will show, in the case of each lot of imported cotton piece goods dyed for the account of their customers, the lot number, the dates of receipt and return, the name and address of the customer for whom dyed, the number of pieces of imported cotton piece goods of each kind in the lot, the serial number of each piece, the character of the goods therein, and the yardage of each piece, both before and after dyeing.

A record shall be kept by the customer, which will show the usual import data covering each lot of imported cotton piece goods dyed for his account by the Pond Lily Co., the date on which forwarded to the Pond Lily Co. and the date of return, the number of pieces of imported cotton goods of each kind of material contained in the lot, the serial number of each piece, the Pond Lily Co.'s lot number, and the yardage of each piece, both before and after dyeing. Sworn abstracts from such records shall be filed with the drawback entry.

The allowance shall not exceed the quantity of imported cotton piece goods used in the manufacture of the exported dyed cotton piece goods, as shown by the sworn abstracts described above.

The sworn statement of the Pond Lily Co., dated September 20, 1914, is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(78197.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34832.)

Drawback on automobiles and parts.

Drawback on automobiles and parts manufactured by the Chandler Motor Car Co., of Cleveland, Ohio, with the use of imported materials.

TREASURY DEPARTMENT, *October 14, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on automobiles and automobile parts manufactured by the Chandler Motor Car Co., of Cleveland, Ohio, in whole or in part with the use of imported materials and parts, and with the use of parts produced by domestic manufacturers in whole or in part from imported materials and covered by drawback rates now existing or which shall be promulgated in the future, under the conditions set forth in the sworn statements of the said company dated September 24 and 26, 1914, transmitted herewith, and the sworn statements filed by the domestic manufacturers in connection with drawback rates separately established.

The allowance shall not exceed the quantities of imported materials used in the manufacture of the exported automobiles or parts appearing therein, as the case may be, as shown by the aforesaid sworn statements of the Chandler Motor Car Co., or provided for by drawback rates separately established, covering parts supplied to the Chandler Motor Car Co., the said allowance to be reduced, where allowance for waste is claimed, by the quantity of imported materials which the value of such waste will replace.

Supplementary sworn statements and schedules may be filed, modifying the originals or showing the use of other imported parts, materials or parts made from imported materials, new models of automobiles or parts manufactured for exportation, changes in quantities or values of imported materials or parts, or of wastes incurred, etc. Such supplementary statements and schedules shall be referred to the special agents for verification and their reports, together with the statements and schedules, submitted to the department for approval prior to liquidation of the entries referring thereto.

Respectfully, ANDREW J. PETERS,
(101006-5.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Cleveland, Ohio.*

(T. D. 34833.)

Drawback on automobiles and parts.

Drawback on automobiles and parts manufactured by the Baker Motor Vehicle Co., of Cleveland, Ohio, with the use of imported materials.

TREASURY DEPARTMENT, *October 15, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations

(T. D. 31695 of June 16, 1911), on automobiles and automobile parts manufactured by the Baker Motor Vehicle Co., of Cleveland, Ohio, in whole or in part with the use of imported materials and parts, and with the use of parts produced by domestic manufacturers in whole or in part from imported materials and covered by drawback rates now existing or which shall be promulgated in the future, under the conditions set forth in the sworn statement of the said company dated August 28, 1914, transmitted herewith, and the sworn statements filed by the domestic manufacturers in connection with drawback rates separately established.

The allowance shall not exceed the quantities of imported materials used in the manufacture of the exported automobiles or parts or appearing therein, as the case may be, as shown by the aforesaid sworn statement of the Baker Motor Vehicle Co. or provided for by drawback rates separately established covering parts supplied to the Baker Motor Vehicle Co., the said allowances to be reduced, where allowance for waste is claimed, by the quantity of imported materials which the value of the waste will replace.

Supplementary sworn statements and schedules may be filed, modifying the originals or showing the use of other imported parts, materials, or parts made from imported materials, new models of automobiles or parts manufactured for exportation, changes in quantities or values of imported materials or parts or of wastes incurred, etc. Such supplementary statements and schedules shall be referred to the special agents for verification, and their reports, together with the statements and schedules submitted to the department for approval prior to liquidation of the entries referring thereto.

Respectfully, ANDREW J. PETERS,
(101006–11.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Cleveland, Ohio.*

(T. D. 34834.)

Drawback on electric commutators.

Drawback on electric commutators manufactured by the Cameron Electrical Manufacturing Co., of Ansonia, Conn., with the use of imported mica splittings.

TREASURY DEPARTMENT, *October 15, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on electric commutators manufactured by the Cameron Electrical Manufacturing Co., of Ansonia, Conn., with the use of imported mica splittings.

Each lot of "plates" of each size and gauge to be used in the manufacture of commutators for exportation with benefit of draw-

back shall be given a serial lot number, and a manufacturing record shall be kept, which will show, in addition to the usual import data, the lot number and date of manufacture of each lot of such plates, the number of plates of each size and gauge produced, the quantity of imported mica splittings, and the quantity of other materials appearing therein. An abstract from such manufacturing record shall be filed with each drawback entry, and the segments appearing in the exported commutators shall be identified by lot number with the particular lot of plates from which cut.

The allowance shall not exceed the quantity of imported mica splittings used in the manufacture of the exported commutators as shown by the sworn statement from the manufacturing record described above, and the sworn schedule of the manufacturers, dated September 24, 1914, which is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(102159.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34835.)

Drawback on automobile axles and gears.

Drawback on automobile axles and gears manufactured by the Yuster Axle Co., of Cleveland, Ohio. with the use of imported ball bearings.

TREASURY DEPARTMENT, *October 15, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on automobile axles and gears manufactured by the Yuster Axle Co., of Cleveland, Ohio, with the use of imported ball bearings.

There is inclosed herewith the sworn statement of the manufacturer, dated September 24, 1914, showing the number and kinds of imported ball bearings appearing in axles and gears manufactured for the account of the Chandler Motor Car Co. The allowance shall not exceed the number of imported ball bearings appearing in the exported axles and gears, as shown by the sworn statement of the manufacturers above referred to.

Supplementary sworn statements covering other axles and gears manufactured by the said company with the use of imported ball bearings may be filed, and upon verification of such statements and schedules by the special agents, drawback may be allowed on the gears and axles described therein on the basis of the number of imported ball bearings appearing in the exported gears and axles.

Respectfully, ANDREW J. PETERS,
(102648.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Cleveland, Ohio.*

(T. D. 34836.)

Fresh-water fish skinned and boned.

Fresh-water fish skinned and boned dutiable at rate of three-fourths of 1 cent per pound under paragraph 216 of the tariff act of October 3, 1913.

TREASURY DEPARTMENT, *October 15, 1914.*

SIR: I have to acknowledge the receipt of your letter of the 5th instant, requesting instructions as to the proper classification of fresh-water fish skinned and boned.

In reply I have to advise you that in the opinion of the department fresh-water fish skinned or boned are properly dutiable at the rate of three-fourths of 1 cent per pound under paragraph 216 of the present tariff act. You will be governed accordingly.

Your attention is invited in this connection to the department's decision of March 15, 1912 (T. D. 32308), and the decision of the United States Circuit Court for the Northern District of New York (Lake Ontario Fish Co. *v.* United States, 99 Fed., 551), involving the classification of fish skinned or boned.

Respectfully, ANDREW J. PETERS,
(74424.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Duluth, Minn.*

(T. D. 34837.)

Boxwood sticks—Umbrella handles.

Appeal directed from decision of the Board of United States General Appraisers of August 25, 1914, Abstract 36342 (T. D. 34742), involving the classification of boxwood sticks intended for use as umbrella handles.

TREASURY DEPARTMENT, *October 16, 1914.*

SIR: Your attention is invited to the decision of the Board of United States General Appraisers of August 25, 1914, Abstract 36342 (T. D. 34742), wherein it was held that certain umbrella handles, approximately 14 inches in length, were not dutiable as assessed at the rate of 20 per cent ad valorem under paragraph 203 of the tariff act of 1909, but were entitled to admission free of duty under the provision in paragraph 713 of the said act for woods in the rough, not further advanced than cut into lengths suitable for sticks for umbrellas.

The department in a decision dated July 17, 1913 (T. D. 33634), held that merchandise of the character under consideration was not entitled to admission free of duty under paragraph 713, for the reason that it was not of sufficient length to be used as sticks for umbrellas, and you are accordingly requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the decision of the board

above cited, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, ANDREW J. PETERS,
(98576.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 34838.)

Drawback on Chinese lamp founts and lamp-case shooks.

T. D. 34448 of May 8, 1914, extended to cover Chinese lamp founts manufactured by the Standard Oil Co. from imported tinplate, and T. D. 33902 of November 21, 1913, extended to cover lamp-case shooks manufactured by the above company from lumber imported prior to October 4, 1913.

TREASURY DEPARTMENT, *October 19, 1914.*

SIR: The department's regulations of May 8, 1914 (T. D. 34448), providing for the payment of drawback on cans and attachments manufactured with the use of imported tinplate, are hereby extended to cover Chinese lamp founts manufactured by the Standard Oil Co. of New York, N. Y., with the use of imported tinplate.

The department's regulations of November 21, 1913 (T. D. 33902), providing for the payment of drawback on box shooks manufactured with the use of imported lumber, are hereby extended to cover lamp-case shooks manufactured by the Standard Oil Co. from lumber imported prior to October 4, 1913.

The sworn statements of the manufacturers, dated August 17 and September 18 and 22, 1914, are transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(98979.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34839.)

Drawback on preserved and canned pears.

Drawback on preserved and canned pears manufactured by the Curtice Bros. Co., of Rochester, N. Y., with the use of refined sugar produced from imported raw sugar.

TREASURY DEPARTMENT, *October 19, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on preserved and canned pears manufactured by the Curtice Bros. Co., of Rochester, N. Y., with the use of refined sugar produced from imported raw sugar.

The quantity of refined sugar which may be taken as the basis for the payment of drawback shall not exceed the quantity used in the manufacture of exported preserved and canned pears, as shown by

the sworn statement of the manufacturers, dated September 25, 1914, which is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(102799.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Buffalo, N. Y.*

(T. D. 34840.)

Drawback on vacuum cleaners and electric sweepers.

Drawback allowed on vacuum cleaners, electric sweepers, and aluminum parts therefor manufactured by the Duntley Products Co., of Erie, Pa., with the use of aluminum castings made for their account by the Germann Bronze Co., of Erie, Pa., with the use of imported aluminum and domestic materials.—T. D. 33235 of February 28, 1913, revoked.

TREASURY DEPARTMENT, *October 19, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on vacuum cleaners, electric sweepers, and aluminum parts therefor manufactured by the Duntley Products Co., of Erie, Pa., with the use of aluminum castings made for their account by the Germann Bronze Co., of Erie, Pa., with the use of imported aluminum and domestic materials.

The allowance shall not exceed the quantity of imported aluminum appearing in the exported cleaners, sweepers, and parts, as shown by the sworn statements of the Duntley Products Co., dated July 30 and August 10, 1914, and of the Germann Bronze Co., dated July 6, 1914, which are transmitted herewith for filing in your office.

T. D. 33235 of February 28, 1913, is hereby revoked.

Respectfully, ANDREW J. PETERS,
(97194.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Buffalo, N. Y.*

(T. D. 34841—G. A. 7614.)

Printing machines—Printing presses.

Wall paper printing machines designed to coat the surface of paper to produce a tinted effect and for printing and embossing designs on paper are not printing presses nor dutiable as such within the scope of the decision of the United States Court of Customs Appeals in the case of Petry *v.* United States (3 Ct. Cust. Appls., 348; T. D. 32906).

United States General Appraisers, New York, October 14, 1914.

In the matter of protest 726622 of F. B. Vandegrift & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

FISCHER, *General Appraiser:* The merchandise in dispute consists of two so-called printing presses or printing machines, upon both of

which duty was levied at 45 per cent ad valorem under paragraph 199, tariff act of 1909, as manufactures of metal not specially provided for. The importers allege that said articles are properly dutiable as printing presses at 30 per cent ad valorem under the specific provision therefor in paragraph 197 of said act.

It appears from the testimony that the machines under consideration are used in the manufacture of wall paper; that each machine is equipped with a set of rollers; that paper passing between one set of rollers is coated over its entire surface with a solid color, and that the same paper, or a sheet of blank paper, when passed through the other set of rollers has simultaneously printed and embossed thereon certain designs or figures. The particular processes employed in the operation of these machines, as described by the witness for the importers, are as follows:

The paper goes in, goes through two rollers, steel roller against the paper rolls; there are eight appliances. The ink is put in the color pan; in the color pan is the color roller; that roller applies the ink to the rubber roller, and the rubber roller applies the ink to the gelatin roll. That applies the ink to the steel roll. As the paper passes through the two rollers, the ink is applied to the steel roll which applies the ink to the paper.

* * * * * * *

Q. The ink is used for the purpose of coloring?—A. Yes; for the purpose of coloring

* * * * * * *

Q. The one invoiced as a printing machine?—A. No; that is all it does, just printing.

* * * * * * *

Q. In the use to which you have put it, has it been chiefly used for putting on solid color or design?—A. For coating on solid color.

* * * * * * *

Q. In addition to those there was only one extra steel roll with a design?—A. Not a steel roll; a rubber roll.

Q. That has a design on it?—A. Yes, sir.

Q. Referring now to the machine that was invoiced as one embossing machine, when you used that machine you took the paper that had already been coated with the color?—A. Yes, sir.

The importers place their reliance for a favorable decision upon the ruling of this board in the case of T. Strahan Co., Abstract 28706 (T. D. 32560). In that case it was held that a rotary press employed to print designs on wall paper was a printing press. It was there clearly established that the disputed merchandise was in fact a rotary printing press. No such state of facts is here presented. So far as the record before us shows, the machines here in question are of different construction from those involved in the Strahan case. The testimony submitted is to the effect that the sole function of one of said machines is to coat the surface of paper for the purpose of producing a tinted effect, while the other machine is used for printing and embossing. Neither of them constitutes a printing press, as that article

is defined in the decision of the United States Court of Customs Appeals in the case of Petry *v.* United States (3 Ct. Cust. Appls., 348; T. D. 32906), wherein the court used the following language:

> * * * The Standard Dictionary does say that the expressions "printing press" and "printing machine" are used interchangeably. Nevertheless, we take judicial notice of the fact that while every printing press may be correctly referred to as a printing machine, not every printing machine can be properly called a printing press. As commonly and generally understood, printing presses are those printing machines which are chiefly used by the art or trade of letter-press printing on paper and like substances, and which are designed and intended to produce such printed matter as books, newspapers, magazines, periodicals, circulars, handbills, etc.

To a like effect is the decision of the same court in the case of Lang *v.* United States (5 Ct. Cust. Appls., —; T. D. 34327), which involved machines for printing or stamping labels upon collapsible metal tubes used for holding toilet paste of various kinds.

We find that the machines in question are not primarily intended for the use ordinarily performed by a printing press, and that they are not offered in the market as printing presses.

The protest is therefore overruled and the decision of the collector affirmed.

(T. D. 34842—G. A. 7615.)

Reappraisement.

NOTICE OF ADVANCE.

When an importer receives notice from the collector that his goods have been advanced on appraisement and files an appeal to reappraisement on "all items advanced" by the appraiser, and the appeal is subsequently decided by the general appraiser adversely to the importer after the same had been regularly set for trial and hearing had thereon, and a second notice covering the same advance is thereafter given to the importer because an error had been committed in the first notice in stating the percentage of the advance to be less than it was afterwards found to be, *Held*, that, as the first notice was not so defective as to mislead the importer, the sending of a second notice did not reopen the case and give the importer a new right of appeal to reappraisement.

United States General Appraisers, New York, October 16, 1914.

In the matter of reappraisement 76566 of Henry Barnard.

HOWELL, *General Appraiser:* This appeal to reappraisement, dated September 3, 1914, is a duplicate of the appeal of the same importer dated July 31, 1914. The last-mentioned appeal, like the present one, is directed against "all items advanced imported by Henry Barnard in the *President Lincoln* from Hamburg." The invoice transmitted by the collector with this appeal is the invoice which was before me with the appeal of July 31, 1914, and covers three cases (Nos. 204 to 206, inclusive) of artificial silk fabrics, all of which were advanced in value by the appraiser. When the appeal of July 31 was received by this board it was regularly set for trial, and due notice of the time and place of hearing was given to the importer

and the Assistant Attorney General in charge of customs cases. On the trial day the importer and counsel for the Government appeared and were granted a hearing. After full consideration of the evidence offered, the appraised value was affirmed by me under date of August 21, 1914. That decision settled all the issues raised by the appeal then before me, and if the importer or the collector was dissatisfied with the decision the remedy was by an appeal to rereappraisement. (Par. M, sec. 3, tariff act of 1913.) It does not appear from the record on what theory it is claimed a second appeal to a single general appraiser may be allowed in this case, but it was stated at the hearing that the collector gave the importer a second notice of the advance made by the appraiser, because in the first notice an error had been committed in stating the percentage of the advance to be 2 per cent when it was actually 10 per cent. When the second notice was received by the importer he filed another appeal within 10 days from the date of that notice, and that is the appeal now before me. The importer is undoubtedly entitled to notice of the advance by the appraiser. The Lace House *v.* United States (141 Fed., 869; T. D. 26970) and article 884 of the Customs Regulations of 1908. The manifest purpose of advising the importer of the advance is to enable him to avail himself, if he so desires, of the right of appeal guaranteed to him by paragraph M, section 3, tariff act of 1913.

In this case the importer received a notice, which, however defective in details, was a notice to him that his goods had been advanced on appraisement, and manifestly it was sufficiently specific to enable him to determine whether or not he should avail himself of his statutory right of appeal to reappraisement, for he duly filed an appeal requesting a reappraisement of all items advanced by the appraiser. The issue raised by the appeal was the only issue which may be raised on an appeal to reappraisement, viz, the dutiable value or wholesale price of the merchandise at the time of exportation to the United States in the principal markets of the country from whence exported, and in this case, that issue having been raised as to all the merchandise advanced by the appraiser, which was also all the merchandise in the importation, and having been decided by the general appraiser, the matter has become *res adjudicata* and can not be reopened by a second notice from the collector to the importer. If the notice of the advance had been so defective as to mislead the importer to an extent which resulted in his failing to avail himself of his statutory right of appeal, a more serious question would arise. But in this case it is apparent that the importer was not in any way misled by the notice, for when he received the notice indicating an advance of 2 per cent he promptly appealed and requested a reappraisement of all items advanced by the appraiser, which is all that he could have done if the notice had correctly stated the advance to be 10 per cent.

The appeal is accordingly dismissed.

(T. D. 34843—G. A. 7616.)

Mixture of goods—Separation.

When two classes of goods, subject to different rates of duty, are imported in a mixed condition, but are capable of separation with reasonable accuracy, the importer may separate them, and the result of such separation introduced as evidence before the board will be used as the basis of a finding by the board.

United States General Appraisers, New York, October 17, 1914.

In the matter of protests 730044, etc., of the Seaboard Rice Milling Co. *et al.* against the assessment of duty by the collector of customs at the port of Galveston.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers; SOMERVILLE, G. A., not participating).

WAITE, *General Appraiser:* Four shipments of rice from Holland and Germany are here in question. The rice is invoiced as "Moulmein cargo rice, No. 1," and "Rough rice." It has been assessed at five-eighths of 1 cent per pound under paragraph 193, tariff act of 1913, as "rice free of the outer hull and still having the inner cuticle on." The claim is that a portion of this rice had the outer hull on, and that such portion should be assessed at the rate specifically provided therefor, three-eighths of 1 cent per pound. Paragraph 193 reads as follows:

193. Rice, cleaned, 1 cent per pound; uncleaned rice, or rice free of the outer hull and still having the inner cuticle on, five-eighths of 1 cent per pound; rice flour, and rice meal, and rice broken which will pass through a number twelve sieve of a kind prescribed by the Secretary of the Treasury, one-fourth cent per pound; paddy, or rice having the outer hull on, three-eighths of 1 cent per pound.

The question really is whether the Government officers should have separated and assessed separately the two grades of rice which were mingled together.

One of the questions before the board is as to whether it is permissible to receive evidence as to the quantities of the two qualities of rice in the importations and base the finding upon such evidence. The contention of the Government is that the return of the Government officials should be received; that they were in no way required to separate the two qualities of rice, the same having been mingled on importation. It is contended by the Government counsel that this mingling of the two qualities was intentional, from which it can be inferred, at least, that the importers intended to defraud the Government by making the importations at a lower rate than fixed by law. We see nothing in the record which warrants us in finding that any fraud was intended. It appears, we think, conclusively that the rice was bought in the market in the usual form; that is to say, the two qualities were mixed. We are of the opinion that the Government officials were not bound, in the absence of any specific

requirement in the statute, to resort to extraordinary or inconvenient means for a separation. We do not think, however, that the importers are precluded from making such separation if it can be done with reasonable accuracy; and the result of such separation, in our judgment, may be made the basis of a finding by the board.

It seems these importations consisted of a mixture of what is described in paragraph 193 as rice free of the outer hull and still having on it the inner cuticle, which would be dutiable at five eighths of 1 cent per pound, and also rice having the outer hull on, in which form it is sometimes called "paddy rice," and is dutiable at three-eighths of 1 cent per pound.

The testimony, we think, shows with reasonable certainty, on the separation of 50 bags out of the total importation of 844 bags (protest 732839), the correct amount of rice with the outer hull removed and the rice with the outer hull on. In performing this separation, however, it appears there was thrown off from the rice a certain amount of material which, we assume, consisted of fine particles of hull and foreign substances contained in the rice, the amount of which is also shown by the testimony of the importers.

The tare to be considered consists of the sacks or bags in which the rice was contained. We are not advised as to whether anything else entered into the tare reported by the Government officials. At all events, we find that the weight of the sacks, as sworn to by the importers, is less than the tare allowed by the Government weigher.

We are not advised as to the method pursued by the Government officers in weighing this commodity, how much was weighed, or upon what basis the tare was determined. There is no evidence introduced however, on the part of the Government contradicting the testimony given by the importers from actual weight, which seems to have been made in the presence of the Government officials.

The material which was excluded by means of the separation, and which could not be classified as rice, appears to have been such material as would be naturally found in this commodity on importation. There is nothing to indicate that it was excessive in amount or that it should have been excluded. We conclude that it should be returned and pay duty as rice. We have therefore restored to the two different classes of rice a proportionate amount of such material, based upon the amount found in the number of sacks which were weighed.

Upon the basis of the actual weight of the rice and extraneous matter and the weight of the bags, we conclude that the importers should pay duty on the importations covered by the respective protests as follows:

Protest 732839 at the rate of five-eighths of 1 cent per pound on 148,297 pounds of rice with the outer hull removed, and at the rate of three-eighths of 1 cent per pound on 31,137 pounds of rice with the outer hull on.

Protest 730044 at the rate of five-eighths of 1 cent per pound on 46,687 pounds free of the outer hull, and at three-eighths of 1 cent per pound on 9,663 pounds having the outer hull on.

Protest 730045 at five-eighths of 1 cent per pound on 37,424 pounds free of the outer hull, and at three-eighths of 1 cent per pound on 8,242 pounds having outer hull on.

Protest 730046 at five-eighths of 1 cent per pound on 55,342 pounds free of the outer hull, and at three-eighths of 1 cent per pound on 11,502 pounds having the outer hull on.

The protests are sustained to the above extent and liquidation will be made accordingly.

(T. D. 34844—G. A. 7617.)

Bottle caps of metal, decorated.

Bottle caps of metal, the tops of which are embossed with a design in the shape of a star, a bunch of grapes, or a crown, are properly dutiable under the last part of paragraph 164, tariff act of 1913, as bottle caps of metal, decorated.

United States General Appraisers, New York, October 17, 1914.

In the matter of protest 737811 of Oscar Heyman & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

FISCHER, *General Appraiser:* The merchandise in question consists of bottle caps of metal, the tops of which are embossed with a design in the shape of a star, a bunch of grapes, or a crown. Duty was assessed thereon at 40 per cent ad valorem under the last half of paragraph 164, tariff act of 1913, as bottle caps of metal, decorated. The importers claim that said articles are properly dutiable at 30 per cent ad valorem under the first half of said paragraph as bottle caps of metal, not decorated. Paragraph 164 reads as follows:

Bottle caps of metal, collapsible tubes, and sprinkler tops, if not decorated, colored, waxed, lacquered, enameled, lithographed, electroplated, or embossed in color, 30 per centum ad valorem; if decorated, colored, waxed, lacquered, enameled, lithographed, electroplated, or embossed in color, 40 per centum ad valorem.

It will thus be observed that the Government contends, while the importers deny, that the designs embossed upon the metal bottle caps in question constitute decorations.

This precise question, with respect to decorations upon glass bottles, formed the basis of litigation before this board and the courts some 14 years ago, and all similar questions arising in the interim have been considered fully settled by the decisions then rendered.

In G. A. 4769 (T. D. 22503) this board, following the ruling laid down in Koscherak *v.* United States (98 Fed., 596), held that bottles

with plain lettering thereon were not decorated, while bottles having thereon a design showing a basket of flowers were decorated. This ruling was affirmed by the United States Circuit Court of Appeals in Utard *v.* United States (128 Fed., 422; T. D. 25115).

In harmony with the principles laid down in said rulings, metal bottle caps having embossed thereon, but not in color, words such as "brandy," "whisky," and like terms descriptive of the contents of the bottles upon which they are to be placed—and similar to the caps represented by illustrative Exhibit B herein—would be properly classifiable under the first half of said paragraph 164 at 30 per cent ad valorem; whereas similar caps with such words embossed thereon in color would be correctly dutiable under the last half of said paragraph at 40 per cent ad valorem. Such construction would seem to give full legal effect to the words in said parargaph "not * * * embossed in color" and "embossed in color," and would also negative the importers' argument that bottle caps of metal embossed with a design not in color are specifically provided for in said paragraph at the lower rate of duty, whether or not such embossed design is fancy or plain.

It appears from the testimony that there are bottle caps known in trade and commerce which are absolutely plain, being neither decorated, colored, waxed, lacquered, enameled, lithographed, or electroplated, from which fact the Government counsel argues that there must also be so known and recognized a decorated cap which is neither colored, waxed, lacquered, enameled, lithographed, or electroplated, and that to this latter class the merchandise in question properly belongs. To hold otherwise, he urges, would leave the word "decorated" in said paragraph absolutely without meaning and incapable of application.

The witness Bruen supports the contention of the Government in this respect. His testimony is to the effect that if the disputed bottle caps are not properly classifiable as decorated caps, then he knows of no caps, decorated or embossed with a fancy or ornamental design, and which is neither colored, waxed, lacquered, enameled, lithographed or electroplated, that may be correctly returned for duty as a bottle cap of metal, decorated. In other words, he concurs in the view of the counsel for the Government that such a construction would operate to nullify the legal effect of the word "decorated" in said paragraph.

At the time of hearing the importers, by the introduction of testimony, endeavored to establish the fact that metal bottle caps of the particular kind here in dispute have a uniform and well-recognized trade name under the designation of "plain metal bottle caps." Inasmuch, however, as the terms employed in the tariff provision under consideration are purely descriptive and in no way denomina-

tive, and therefore not susceptible of proof as to commercial designation, such contention of the importers can not prevail. Whether a bottle cap is decorated or not must be determined solely by a recourse to the common and ordinary understanding of that term.

The protest is therefore overruled and the decision of the collector affirmed.

(T. D. 34845.)

Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, Somerville, and Hay.

BEFORE BOARD 1, OCTOBER 14, 1914.

No. 36703.—ARTIFICIAL FLOWERS—BOUTONNIERES.—Protest 668392 of American Express Co. (New York). Opinion by McClelland, G. A.

Boutonnieres of dried natural flowers, moss, and tinfoil, classified as artificial flowers under paragraph 438, tariff act of 1909, were claimed dutiable as cut flowers, preserved or fresh (par. 263). Protest overruled.

No. 36704.—PROTESTS OVERRULED.—Protests 527207, etc., of Wakem & McLaughlin et al. (New York). Opinion by McClelland, G. A.

Protests unsupported; overruled.

No. 36705.—IMITATION PRECIOUS STONES.—Protest 630384 of the American Bead Co. (New York). Opinion by Sullivan, G. A.

Imitation precious stones in metal settings classified as manufactures of metal and paste under paragraphs 199 and 109, tariff act of 1909, were held dutiable as imitation precious stones for use in the manufacture of jewelry (par. 449). Abstract 35288 (T. D. 34355) followed.

No. 36706.—PROTESTS OVERRULED.—Protests 649982 and 719611, etc., of Hensel, Bruckmann & Lorbacher, and protests 478775, etc., of A. Steinhardt & Bro. et al. (New York). Opinions by Sullivan, G. A.

Protests unsupported; overruled.

No. 36707.—FISH IN TINS.—Protests 714799, etc., of Strohmeyer & Arpe Co. et al. (New York and Port Townsend). Opinion by Brown, G. A.

United States *v.* Miller (5 Ct. Cust. Appls., —; T. D. 34443) and United States *v.* Smith (4 Ct. Cust. Appls., 70; T. D. 33312) followed as to fish in tins.

BEFORE BOARD 2, OCTOBER 14, 1914.

No. 36708.—HEXAGON TURRET LATHES—MACHINE TOOLS.—Protest 755530 of G. W. Sheldon & Co. (New York). Opinion by Fischer, G. A.

Certain parts of hexagon turret lathes classified as manufactures of metal under paragraph 167, tariff act of 1913, were claimed dutiable with the lathes as machine tools (par. 165). Protest overruled. G. A. 7562 (T. D. 34424) followed.

No. 36709.—PROTESTS OVERRULED.—Protest 751293 of G. W. Sheldon & Co. (New York). Opinion by Fischer, G. A.

Protest unsupported; overruled.

BEFORE BOARD 3, OCTOBER 14, 1914.

No. 36710.—ILLIPE NUTS.—Protest 726491 of Gravenhorst & Co. (New York).

WAITE, *General Appraiser:* Illipe nuts have been here assessed under paragraph 283, tariff act of 1909, providing for "nuts of all kinds, shelled or unshelled, not specially provided for in this section, 1 cent per pound." They are claimed to be free of duty under either paragraph 559, 580, or 630. At the hearing and in the brief which has been filed by the attorneys for the importers reliance seems to be placed upon the claim under paragraph 559—that is, that these nuts are free as "drugs, such as * * * nuts, * * * in a crude state, not advanced in value or condition."

Testimony has been taken on behalf of the importers, which tends to show that this is practically the first importation in commercial quantity of this commodity. There is some testimony which would indicate that the illipe nut is used for medicinal purposes abroad, but there is no testimony showing that any such use has been made of it in this country. It is brought over for experimental purposes. About the only thing that can be done with it is to extract oil or grease from it, evidently with the hope that some medicinal quality may be developed and the nut made use of for medicinal purposes. There is nothing in the record, however, which would warrant us in calling it a drug other than some rather loose statements to the effect that it is so known abroad. We do not think the evidence is sufficient to establish it as a drug in this country. Counsel in his brief has referred to the encyclopædic definition of illipe nut. In Foster's Encyclopædic Medical Dictionary, volume 3, page 1970, under the word "illipe," it says, "See bassia butyracea." By reference to that citation we learn that bassia *butyracea* is the Indian butter tree, the *phulwara* of the Bengalese. It is described as a tree 70 feet high, growing in the subtropical Himalayan regions. The fruit is edible, and from its kernels a yellowish-white fatty substance called "choorie" is expressed. It is used with other things for food.

We can not connect this with the importation here in question, because the testimony clearly indicates that the nut the subject of this importation is not edible. We gather the same fact from an inspection of the sample and the taste of the nut.

We are satisfied from an inspection of the sample and from the evidence that the commodity is a nut, and unless it is shown to be a drug it should be classified under paragraph 283 as a nut. We are unable from this record to hold that the claim of the importers is correct. We therefore sustain the classification made by the collector, overruling the protest.

No. 36711.—WOOD OIL NUTS.—Protest 723951 of L. C. Gillespie & Sons (New York). Opinion by Waite, G. A.

Wood oil nuts, claimed to be nonedible and used entirely for the extraction of the oil contained therein, were held properly classified under the provision for nuts of all kinds in paragraph 283, tariff act of 1909, rather than as crude drugs (par. 559), as claimed.

No. 36712.—BEANS IN TINS AND JARS.—Protests 689028, etc., of W. A. Brown & Co. (New York). Opinion by Waite, G. A.

Beans put up in hermetically sealed tins and in stone jars, classified under paragraph 251, tariff act of 1909, were claimed dutiable as prepared vegetables (par. 252), as a sauce (par. 253), or as a nonenumerated manufactured article (par. 480). Protests overruled. Abstract 32840 (T. D. 33591) cited.

No. 36713.—PROTESTS OVERRULED.—Protests 692259, etc., of Chun San Tong et al. (Portland, Oreg.). Opinion by Waite, G. A.

Protests unsupported; overruled.

No. 36714.—ROTTEN FRUIT—REGULATIONS.—Protest 731594 of James M. Fanning Co. (New York). Opinion by Somerville, G. A.

Protest overruled claiming an allowance in duty for rotten fruit, the regulations of the Secretary of the Treasury not having been complied with. Abstract 31187 (T. D.

33145), G. A. 7180 (T. D. 31349), G. A. 7316 (T. D. 32148), and Houlder *v.* United States (4 Ct. Cust. Appls., 247; T. D. 33480) followed. United States *v.* Zito (3 Ct. Cust. Appls., 209; T. D. 32531) noted.

No. 36715.—WOOD PULP.—Protests 585273, etc., of Perkins-Goodwin Co. et al. (Boston et al.), protest 717489 of D. W. Ferguson (Los Angeles), protests 633866, etc., of M. Harrison & Co. (New York), and protests 692829, etc., of Hensel, Bruckmann & Lorbacher, et al. (New York et al.). Opinions by Somerville, G. A.

American Express Co. *v.* United States (4 Ct. Cust. Appls., 146; T. D. 33434) followed as to wood pulp and paper claimed entitled to free entry. Protests sustained in part.

No. 36716.—PROTESTS ABANDONED.—Protests 729037, etc., of L. P. Siebold et al. (Baltimore et al.).

Protests abandoned.

TREASURY DEPARTMENT, *October 22, 1914.*

The appended decision of the United States Circuit Court of Appeals for the Second Circuit is published for the information of customs officers and others concerned.

ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 34846.)

Finality of appraisement.

BORNN HAT CO. *v.* UNITED STATES. UNITED STATES *v.* CALHOUN.[1]

Circuit Court of Appeals, Second Circuit. May 14, 1914.

1. The powers of collectors of customs relate to classification and reliquidation, and not to valuation, which is confided to appraisers.

2. The provision in subsection 13, section 28, tariff act of 1909, that in cases where no objection is made thereto the decision of the appraiser "shall be final and conclusive against all parties" is conclusive against the collector.

In error to the District Court of the United States, Southern District of New York.

[Affirmed.]

On writs of error to review judgments entered upon verdicts directed by the court in favor of the United States and against the Bornn Hat Co. in the first of the above-entitled actions and in favor of David Calhoun, the defendant in the second of the said actions. No question of fact is involved in either action, and in each both parties asked for the direction of a verdict. Each action was brought to recover the penalty of $100 imposed by the customs administrative act as amended by subsection 16 of section 28 of the tariff act of August 5, 1909, for failure to testify pursuant to citations issued to the defendants below.

The opinion of the District Court is reported in 184 Fed., 499 (T. D. 31730).

H. Snowden Marshall, United States attorney, and *Addison S. Pratt*, assistant United States attorney, both of New York City.

John Giblon Duffy, of New York City, for David Calhoun.

James, Schell & Elkus, of New York City, for the Bornn Hat Co.

---

[1] Reported in 215 Fed., 709.

Before LACOMBE, COXE, and WARD, circuit judges.

Per curiam: The majority of the court is of the opinion that this controversy was correctly decided in the District Court. The interpretation of the statute by the district judge seems to us to provide a fair, reasonable, and consistent method of procedure.

At ports where appraisers are located it seems logical and in the interests of an orderly administration of the law that their action shall be final. This, in our opinion, is the clear meaning of the following language quoted from subsection 16:

And if such person be the owner, importer, or consignee, the appraisement which the general appraiser, or Board of General Appraisers or local appraiser or collector, where there is no appraiser, may make of the merchandise shall be final and conclusive.

In the Calhoun case the appraisement had been made, the time to appeal had expired, the duties had been paid, and the merchandise surrendered. Calhoun appeared and answered all questions as to classification, but refused to answer questions relating to dutiable value, upon the ground that the collector had no power to examine into that question when the appraisal had been fully and legally made by the appraisers and the time in which to review their action had expired. In other words, that their action upon the question of value was "final and conclusive." We think the powers of the collector under section 21 of the act of 1874 relate to classification and reliquidation and not to valuation, which latter subject is confided to the appraisers.

In the Bornn Hat case no one answered the citation and default was made. There were several subjects relating to reliquidation upon which the collector might have lawfully interrogated the witness or witnesses had they appeared with the books of the corporation, as called for.

It is unnecessary to add further to the clear discussion of the questions involved to be found in the opinion of Judge Hand.

In each case the judgment is affirmed.

(T. D. 34847.)

Drawback on condensed milk.

Drawback on condensed milk manufactured by Libby, McNeill & Libby, of Chicago, Ill., with the use of refined sugar produced from imported raw sugar.—T. D. 28903, T. D. 29780, T. D. 29985, T. D. 31747, T. D. 32192, and T. D. 33931 revoked.

TREASURY DEPARTMENT, *October 20, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on condensed milk manufactured by Libby, McNeill & Libby, of Chicago, Ill., with the use of refined sugar produced from imported raw sugar.

The quantity of refined sugar which may be taken as a basis for allowance of drawback shall not exceed the quantity appearing in the exported condensed milk, as shown by the sworn statement of the manufacturers, dated October 5, 1914, which is transmitted herewith for filing in your office.

T. D. 28903 of March 30, 1908, T. D. 29780 of May 25, 1909, T. D. 29985 of September 7, 1909, T. D. 31747 of July 12, 1911, T. D. 32192 of January 29, 1912, and T. D. 33931 of December 1, 1913, are hereby revoked.

Respectfully, ANDREW J. PETERS,
(50632.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34848.)

Meat-inspection regulations.

Customs officers instructed relative to enforcement of the regulations of the Secretary of Agriculture, issued July 30, 1914, to take effect January 1, 1915 (B. A. I. Order No. 211), copies of which have been forwarded by mail.

TREASURY DEPARTMENT, *October 21, 1914.*

To collectors and other officers of the customs:

Your attention is invited to the "Regulations governing meat inspection of the United States Department of Agriculture" (B. A. I. Order No. 211), issued July 30, 1914, copies of which have been forwarded to you by mail.

By request of the Secretary of Agriculture, your particular attention is invited to regulation 27 (sec. 7; sec. 9, pars. 6, 7, and 8; and sec. 11) of the said regulations with reference to the procedure in the case of imported meat products, by which you will be governed so far as they are applicable.

The Secretary of Agriculture states that inspectors of his department are stationed at the following-named ports who will seal cars and packages of imported meat and meat products which are destined to interior ports for inspection and marking: Baltimore, Md.; Blaine, Wash.; Boston, Mass.; Buffalo, N. Y.; Burlington, Vt.; Calais, Me.; Detroit, Mich.; Duluth, Minn.; El Paso, Tex.; Jacksonville, Fla.; Los Angeles, Cal.; Malone, N. Y.; Mobile, Ala.; New Orleans, La.; New York, N. Y.; Norfolk, Va.; Ogdensburg, N. Y.; Philadelphia, Pa.; Port Huron, Mich.; St. Albans, Vt.; San Diego, Cal.; San Francisco, Cal.; Saulte Ste. Marie, Mich.

It is further stated by the Secretary of Agriculture that red-bulbed "Tyden" seals embossed with the statement "Foreign Meat, U. S.," followed by serial numbers, will be supplied for railroad cars, and "Brooks" seals painted red and embossed with the same reading matter will be supplied for packages.

At ports other than those listed above customs officers will affix such seals, in accordance with the provisions of said regulation 27 (sec. 7, par. 8). Collectors should therefore estimate the number of seals they will need for six months and make requisition upon the Department of Agriculture for that number.

For the redelivery bond provided for in regulation 27 (sec. 7, par. 13) collectors will use forms Cat. Nos. 3389 or 3391, respectively, 10-day and 6-months' bond for the redelivery of unexamined packages modified to meet the facts in each particular case.

Special attention is also directed to the provision that regulation 27, referred to above, shall take effect January 1, 1915.

Nothing contained herein or in the regulations of the Department of Agriculture the subject hereof shall be construed to obviate the necessity for or to dispense with the appropriate forms of customs entry at the port cf first arrival in the United States.

(100477.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 34849.)

Modeling clay.

Appeal directed from decision of the Board of United States General Appraisers of September 5, 1914, Abstract 36458 (T. D. 34763), involving the classification of certain modeling clay.

TREASURY DEPARTMENT, *October 21, 1914.*

SIR: The department is in receipt of your letter of the 15th instant, inviting attention to the decision of the Board of United States General Appraisers of September 10, 1914, Abstract 36458 (T. D. 34763), wherein it is held that certain modeling clay, which had been assessed with duty at the rate of 20 per cent ad valorem under paragraph 81 of the tariff act of 1913, was properly dutiable at the rate of 15 per cent ad valorem as a nonenumerated manufactured article under paragraph 385 of the said act.

In view of the importance of the issue, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, ANDREW J. PETERS,
(82687.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 34850.)

Drawback on novelty mirrors.

Drawback on novelty mirrors manufactured by the Parisian Novelty Co., of Chicago, Ill., with the use of imported celluloid sheeting.

TREASURY DEPARTMENT, *October 23, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations

(T. D. 31695 of June 16, 1911), on novelty mirrors manufactured by the Parisian Novelty Co., of Chicago, Ill., with the use of imported celluloid sheeting.

A manufacturing record shall be kept, which shall show, in addition to the usual import data, the lot number and date of manufacture of each lot of novelty mirrors manufactured for exportation with benefit of drawback, the quantity, dimensions, value, and weight of imported celluloid sheeting used in the manufacture thereof, the number of novelty mirrors of each size and kind produced, the quantity of waste incurred, and the value of such waste at the time and place of manufacture. A sworn abstract from such manufacturing record shall be filed with each drawback entry.

The allowance shall not exceed the quantity of imported celluloid sheeting used in the manufacture of the exported novelty mirrors, as shown by the sworn abstract from the manufacturing record, the allowance to be reduced according to the quantity of imported material which the value of the waste will replace.

The sworn statement of the manufacturers, dated October 10, 1914, is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(49578.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Chicago, Ill.*

(T. D. 34851.)

Drawback on automobile axles.

Drawback on automobile axles manufactured by the Hess Spring & Axle Co., of Cincinnati, Ohio, with the use of imported ball bearings.

TREASURY DEPARTMENT, *October 23, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on automobile axles manufactured by the Hess Spring & Axle Co., of Cincinnati, Ohio, with the use of imported ball bearings.

There is inclosed herewith the sworn statement of the manufacturers, dated October 3, 1914, covering automobile axles manufactured with the use of imported ball bearings for the account of the Chandler Motor Car Co. The allowance shall not exceed the number of imported ball bearings appearing in the exported axles, as shown by the aforesaid sworn statement.

Supplementary sworn statements and schedules covering other automobile axles manufactured by the Hess Spring & Axle Co. with the use of imported ball bearings for the account of the Chandler Motor Car Co. or other automobile manufacturers or for exporta-

tion by the manufacturer may be filed, and upon verification thereof by the special agents drawback on the axles covered by such supplementary schedules and statements may be allowed. The allowance in any case shall not exceed the number of imported ball bearings appearing in the exported axles.

Respectfully, ANDREW J. PETERS,
(102691.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Cleveland, Ohio.*

(T. D. 34852.)

Drawback on automobiles and parts.

Drawback on automobiles and parts manufactured by the Packard Motor Car Co. with the use of imported materials and parts.—T. D. 33958 of December 3, 1913, revoked.

TREASURY DEPARTMENT, *October 26, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on automobiles and automobile parts manufactured by the Packard Motor Car Co., of Detroit, Mich., in whole or in part with the use of imported materials and parts and with the use of parts produced by domestic manufacturers in whole or in part from imported materials and covered by drawback rates now existing or which shall be promulgated in the future, under the conditions set forth in the sworn statement of the said company, dated August 29, 1914, transmitted herewith, and the sworn statements filed by the domestic manufacturers in connection with drawback rates separately established.

The allowance shall not exceed the quantities of imported materials and parts used in the manufacture of the automobiles or parts exported, as shown by the aforesaid sworn statement of the Packard Motor Car Co., or provided for by drawback rates separately established covering parts supplied to the Packard Motor Car Co., said allowance to be reduced by the quantity of imported materials which the value of the waste will replace.

Supplementary sworn statements and schedules may be filed modifying the originals or showing the use of other imported parts, materials, or parts made from imported materials, new models of automobiles, or parts manufactured for exportation, changes in quantities or values of imported materials or parts, or of waste incurred, etc. Such supplementary statements and schedules shall be referred to special agents for verification and their reports, together with statements and schedules, submitted to the department for approval prior to liquidation of entries referring thereto.

T. D. 33958 of December 8, 1913, and all other regulations providing for the payment of drawback on automobiles manufactured

by the Packard Motor Car Co., of Detroit, Mich., are hereby revoked.

Respectfully, BYRON R. NEWTON,
(79911.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Detroit, Mich.*

(T. D. 34853.)

Card form of manifest.

Card form of manifest for "in transit" shipments by freight through the United States.

TREASURY DEPARTMENT, *October 26, 1914.*

SIR: The department duly received your letter of June 10, 1914, inclosing a communication addressed to you by the deputy collector of customs at Port Huron, in your district, in which that officer recommends that the provisions of T. D. 29940, dated August 6, 1909, be extended so as to provide a card form of manifest for packages forwarded from point to point in Canada through the United States by freight.

The department is of the opinion that the customs revenue would be better safeguarded and there would be less delay and inconvenience if a card form of manifest should be adopted. The department, therefore, approves the recommendation for shipments by freight. The cards should be printed on heavy manila board or linen with a red stripe one-half inch in width in the center thereof and on both sides, the size to be 3 by 6 inches. They will be furnished by the carriers at their own expense in the following form:

UNITED STATES CUSTOMS.

——— R. R. Co.

IN BOND.

Special manifest No. ——
of merchandise in transit through the United States,
From ———
To ———
Via ———, car No. ——

PORT OF ———, COLLECTION DISTRICT No. ——,
———, *191–.*

I hereby certify that —— packages of merchandise covered by the above manifest No. —— were duly corded and sealed by me and delivered for transportation.

———,
U. S. Inspector of Customs.

[Perforate.]

COLLECTION DISTRICT No. ——,
Port of ———, ———, *191–.*

I hereby certify that ——— corded and sealed packages covered by special manifest No. ——, of ——— R. R. Co., were exported through this port this ——— day of ———, 191–.

———,
U. S. Inspector of Customs.

The filing of the manifest required by article 445 of the Customs Regulations of 1908 is not to be dispensed with. Such manifests will be filed by the railroad company with the collectors of customs at the ports of first arrival, who will note thereon the exportation of the various packages when the return coupons herein provided for are received at their respective ports. Each separate shipment shall have one card manifest, to be attached to one package of that shipment. In case all the packages do not arrive, the collector at the port of exportation will notify the collector at the port of first arrival.

Respectfully, BYRON R. NEWTON,
(93120.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Detroit, Mich.*

(T. D. 34854.)

Drawback on chicory.

Drawback on chicory manufactured by Heinr. Franck Sons (Inc.), of Flushing, N. Y., wholly from imported chicory root.

TREASURY DEPARTMENT, *October 27, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on chicory manufactured by Heinr. Franck Sons (Inc.), of Flushing, N. Y., wholly from imported chicory root.

A manufacturing record shall be kept, which shall show, in addition to the usual import data, the lot number and date of manufacture of each lot of chicory manufactured for exportation with benefit of drawback, the quantity and value of imported chicory root used, the quantity of chicory produced, the quantity of waste incurred, and the value of such waste, if any. A sworn abstract from such manufacturing record shall be filed with each drawback entry.

The allowance shall not exceed the quantity of imported chicory root used in the manufacture of the exported chicory, as shown by the sworn abstract from the manufacturing record, the allowance to be reduced according to the quantity of imported material which the value of the waste will replace.

The sworn statement of the manufacturers, dated October 16, 1914, is transmitted herewith for filing in your office.

Respectfully, BYRON R. NEWTON,
(102748.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34855.)

Drawback on flavoring extracts.

Drawback on flavoring extracts manufactured by the Davis & Lawrence Co., of New York, N. Y., with the use of domestic tax-paid alcohol.

TREASURY DEPARTMENT, *October 26, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on flavoring extracts manufactured by the Davis & Lawrence Co., of New York, N. Y., with the use of domestic tax-paid alcohol.

A manufacturing record shall be kept, which will show, in addition to the usual import data, the lot number and date of manufacture of each lot of flavoring extracts manufactured for exportation with benefit of drawback, the kind of flavoring extract manufactured, the quantity and proof of domestic tax-paid alcohol used, the quantity of flavoring extract produced, the quantity of waste incurred, and the quantity of absolute alcohol recovered from waste or residue, if any. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of domestic tax-paid alcohol appearing in the exported flavoring extract, with an addition to compensate for actual waste incurred, as shown by the sworn abstract from the manufacturing record.

The sworn statement of the manufacturers, dated August 6, 1914, is transmitted herewith for filing in your office.

T. D. 34734 of August 28, 1914, is hereby revoked.

Respectfully, BYRON R. NEWTON,
(40852.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34856.)

Tucked shirt bosoms.

Appeal directed from decision of the Board of United States General Appraisers of the 9th instant, G. A. 7613 (T. D. 34823), involving the classification of shirt bosoms ornamented with loom-woven tucks, tuckings chief value.

TREASURY DEPARTMENT, *October 26, 1914.*

SIR: I have to acknowledge the receipt of your letter of the 15th instant, inviting attention to the decision of the Board of United

States General Appraisers of the 9th instant, G. A. 7613 (T. D. 34823), wherein it was held that merchandise consisting of shirt bosoms composed of cotton or flax ornamented with loom-woven tucks, tuckings chief value, which had been assessed with duty at the rate of 60 per cent ad valorem under paragraph 358 of the tariff act of 1913, was properly dutiable as articles of wearing apparel made up or manufactured wholly or in part at the rate of 30 per cent ad valorem under paragraph 256 of the said act.

In view of the importance of the issue and in accordance with your recommendation, you are requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, BYRON R. NEWTON,
(100392.) *Assistant Secretary.*
ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 34857.)

Cancellation of customhouse brokers' licenses.

Collectors of customs authorized to cancel customhouse brokers' licenses upon application of the licensee and surrender of the licenses.

TREASURY DEPARTMENT, *October 27, 1914.*

SIR: The department is in receipt of your letter of the 23d instant, inclosing the application of the holder of customhouse broker's license No. 143, issued under the act of June 10, 1910, for the cancellation of the said license.

As the applicant no longer desires to use his license and has made application for its cancellation, you will cancel the same upon the surrender of the license, and you are hereby authorized to take similar action in other like cases that may arise, upon the licensee making application for the cancellation of his license and surrendering the same.

You will notify the department of the cancellation of licenses under this authority.

Respectfully, BYRON R. NEWTON,
(13170.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 34858—G. A. 7618.)

Cotton cloth, woven figured.

Figured cotton cloth woven on Jacquard looms being more specifically provided for as "cotton cloth, * * * woven figured" than as "all other Jacquard figured manufactures of cotton," is dutiable at the appropriate rate according to the size of the yarn used under paragraph 252, act of 1913, and not at 30 per cent ad valorem under paragraph 258.

United States General Appraisers, New York, October 21, 1914.

In the matter of protests 732972, etc., of J. Sachs & Co. et al. against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

COOPER, *General Appraiser:* The merchandise in question consists of dress goods and shirtings woven on a Jacquard loom. It was returned for duty at 30 per cent ad valorem under the last clause in paragraph 258, tariff act of 1913, which reads as follows:

258. Curtains, table covers, and all articles manufactured of cotton chenille, or of which cotton chenille is the component material of chief value, tapestries, and other Jacquard figured upholstery goods, composed wholly or in chief value of cotton or other vegetable fiber; any of the foregoing, in the piece or otherwise, 35 per centum ad valorem; all other Jacquard figured manufactures of cotton or of which cotton is the component material of chief value, 30 per centum ad valorem.

Protestants claim that the merchandise is dutiable as "cotton cloth, when bleached, dyed, * * * woven figured," etc., at the appropriate rate, according to the size of the yarn used, under paragraph 252 of said act.

The interpretation to be given the words "cotton cloth" and the method of ascertaining the duty collectible thereon are given by Congress in paragraph 253, as follows:

253. The term cotton cloth, or cloth, wherever used in the paragraphs of this schedule, unless otherwise specially provided for, shall be held to include all woven fabrics of cotton, in the piece, whether figured, fancy, or plain, and shall not include any article, finished or unfinished, made from cotton cloth. In the ascertainment of the condition of the cloth or yarn upon which the duties imposed upon cotton cloth are made to depend, the entire fabric and all parts thereof shall be included. The average number of the yarn in cotton cloth herein provided for shall be obtained by taking the length of the thread or yarn to be equal to the distance covered by it in the cloth in the condition as imported, except that all clipped threads shall be measured as if continuous; in counting the threads all ply yarns shall be separated into singles and the count taken of the total singles; the weight shall be taken after any excessive sizing is removed by boiling or other suitable process.

Prior to the enactment of the tariff act of 1913 the law laid down the rule that "the term cotton cloth, or cloth, * * * unless otherwise specially provided for, shall be held to include all woven fabrics of cotton in the piece or cut in lengths, whether figured, fancy, or plain, the warp and filling threads of which can be counted

by unraveling or other practical means," but in the present act the duty is imposed on the cloth in accordance with the size of the yarn used in the manufacture thereof, and Congress has laid down the rule that the term shall include "all woven fabrics of cotton in the piece, whether figured, fancy, or plain," "unless otherwise specially provided for." The provision in the later act covers goods not provided for in the former acts, because it is not limited by the provision that the cloth must be woven in such a manner that "the warp and filling threads * * * can be counted." Under the former acts the term "cotton cloth" has been held to cover cloth woven on Jacquard looms, and merchandise of the same character as the goods here in question was held dutiable as "cotton cloth," rather than as "manufactures of cotton." Hedden *v.* Robertson (151 U. S., 520).

The provision in paragraph 258 under which this merchandise was classified is new to the tariff law, and it must be presumed that Congress had some class of goods in mind which it intended should be covered thereby. In paragraphs 252 and 253 it has enacted a provision for cloth made of cotton, in 254 for cloth composed of cotton and silk, in 255 for mufflers, in 257 for pile fabrics, in 263 for cotton table damask, in 264 for towels, bath mats, quilts, etc., in 265 for lace window curtains, bed sets, etc., in 358 for laces, etc. All of these commodities are sometimes made on the Jacquard loom. Are we to hold that Congress intended that this provision for "Jacquard figured manufactures of cotton" is so broad and all-inclusive as to take the goods out of the paragraphs so carefully worded and which have been held under all previous tariff acts to cover such goods? We think not. Many articles and fabrics, which, under prior tariff acts, have been held to fall under the catch-all provision for "manufactures of cotton," are made on Jacquard looms, and it is more reasonable to assume that Congress intended to make specific provision for such goods under this paragraph. Union damask, union shirtings, cloth in part of metal, jute, and cotton, union damask napkins and table cloths, folding screens, all in chief value of cotton, and cotton bed covers and other articles made on Jacquard looms, have been held dutiable under this catch-all provision "manufactures of cotton," and it may have been that Congress intended to cover such articles by this provision, thereby making a specific enumeration therefor.

Counsel for the Government in his brief makes the point that paragraph 266, which contains the provision for manufactures of cotton, imposes duty at 30 per cent, which is the same as that imposed by the provision in question, and that if this provision is held to cover the same class of goods that would fall within paragraph 266 it would seem that the provision under which assessment was

made in this case was entirely unnecessary and was mere surplusage, and that it is one of the axioms of statutory construction that Congress is not presumed to have inserted meaningless expressions, and therefore the provisions in paragraph 258 should be held to cover articles which would not otherwise fall within the catch-all provision for manufactures of cotton. The fallacy of this argument is shown by an examination of other analogous provisions of the statute, for it appears that Congress has imposed duty at the rate of 30 per cent ad valorem on knit underwear and wearing apparel in paragraph 261, for wearing apparel not knit in paragraph 256, for tracing cloth in paragraph 254, and for cotton cloth exceeding number 99 size yarn in paragraph 252. All of these articles would pay the same rate under the catch-all provision in paragraph 266 in the absence of these special provisions for them, and it can not be successfully contended that all of those provisions are surplusage.

Another consideration which reenforces the construction contended for by the importers is that in paragraph 253 Congress has inserted a provision that, in obtaining the average number of yarn in cotton cloth, "all clipped threads shall be measured as if continuous." It is commonly known, and the testimony in protest 734934 shows, that almost all imported cloths having clipped threads are made on the Jacquard looms. In the early history of the provision for cotton cloth, Jacquard goods were held not to be dutiable as cotton cloth, for the reason that the fabric was not homogeneous; that is, the number of threads per square inch varied in different parts of the fabric (Robertson *v.* Hedden, 40 Fed., 322); but in Hedden *v.* Robertson (151 U. S., 520) the United States Supreme Court held that such goods were properly dutiable as cotton cloth, and not as manufactures of cotton. Then the question arose as to the proper method of counting the number of threads per square inch, and it was held that the extra threads, or clipped threads, should not be counted, and that duty should be computed in accordance with the number of basic warp and filling threads in the fabric. United States *v.* Rusch (167 Fed., 523; T. D. 29506). In the act of 1909, however, a provision was inserted by which "all warp and filling threads, whether ordinary or other than ordinary, and whether clipped or unclipped" should be counted, and under that act it was held that the duty should be imposed in accordance with the average number of threads in any one repeat of the pattern, counting all the threads. Witcombe *v.* United States (3 Ct. Cust. Appls., 240; T. D. 32563). Congress is presumed to have known of these decisions and the litigation with respect to this class of goods under previous tariff acts, and it undoubtedly enacted this provision, "that all clipped threads shall be measured as if continuous," with a view of preventing any dispute as to the mode of measuring such threads and in order to prevent

further litigation respecting this class of goods. The fact that Congress inserted this provision for the measurement of clipped threads in the cotton cloth paragraph is indicative that it intended that Jacquard figured fabrics should be classified as cotton cloth.

In G. A. 7609 (T. D. 34819) we held that towels made from Jacquard figured goods were more specifically provided for as "towels * * * made of cotton" than as "all other Jacquard figured manufactures of cotton," and in the case at bar the question is as to the relative specificness of the terms "cotton cloth * * * woven figured" and "all other Jacquard figured manufactures of cotton." The goods the classification of which is in controversy are provided for by name in paragraph 252, and we think it is well settled that classification under an *eo nomine* designation must be preferred to that prescribed elsewhere in the act in words of general description broad enough to comprehend the importation. "Cotton cloth, coated" has been held to be an *eo nomine* provision, and more specific than "articles or fabrics composed in chief value of artificial silk." Knauth *v.* United States (2 Ct. Cust. Appls., 479; T. D. 32229). "Cotton cloth," therefore, is an *eo nomine* provision, and "cotton cloth, * * * woven figured," is an *eo nomine* provision covering even a smaller class than "cotton cloth." "Manufactures" is clearly a descriptive term. In Thomsen *v.* United States (2 Ct. Cust. Appls., 37; T. D. 31590), wherein the issue was as to the relative specificness of the terms "baskets of wood" and "manufactures of chip," Judge Martin, speaking for the court, said:

> The term "baskets" being the name of the articles, seems clearly to be a more exact and specific designation of them than the term "manufactures." This latter term in this application is one of general description only. The fact that the component material is more specifically described in the second paragraph does not conflict with this conclusion, for nevertheless the term "baskets" is the exact and specific name of the article itself.

And so in the case at bar the term "Jacquard figured manufactures of cotton or of which cotton is the component material of chief value" refers to a class of goods manufactured in a certain way, while "cotton cloth * * * woven figured" is an exact and specific name of an article itself. Furthermore, the cotton-cloth provision is limited to woven fabrics composed wholly or substantially of cotton (G. A. 5018, T. D. 23348), while the "manufactures" provided for in paragraph 258 may be either wholly or in chief value of cotton, which is another indication that paragraph 252 contains the narrower provision.

For the reasons above set forth we hold that the term "cotton cloth, * * * woven figured," is more specific than "all other Jacquard figured manufactures of cotton or of which cotton is the component material of chief value."

We find that the merchandise in question is as follows:

Protests 732972 and 741697.—The merchandise is woven figured cotton cloth, the average size of the yarn being numbers 20, 27, and 28.

Protest 733586.—The merchandise is mercerized colored woven figured cotton cloth, the average size of the yarn of which exceeds number 49 but does not exceed number 59.

Protest 734934.—The merchandise is colored woven figured cotton cloth, the average size of the yarn exceeding number 99.

Protest 739710.—The merchandise invoiced as item 6161 is bleached woven figured cotton cloth, the average size of the yarn being number 45.

Protest 740166.—The merchandise is bleached woven figured cotton cloth, the average size of the yarn being number 87.

Protest 740353.—The merchandise invoiced as item 483 is colored woven figured cotton cloth, the average size of the yarn being number 54.

We hold that the merchandise above enumerated is dutiable at the appropriate rate under paragraph 252, and to that extent the protests are sustained.

As to all other merchandise and all other claims the protests are overruled.

(T. D. 34859—G. A. 7619.)

Reappraisement.

1. ITEMS NOT ADVANCED—JURISDICTION.

Where an importer in his appeal to reappraisement limits his demand for review to "all items advanced" the general appraiser is without jurisdiction to reappraise any other items of merchandise described on the invoice not advanced by the appraiser. The same rule applies to reappraisements by boards of three general appraisers.

2. NOTICE OF APPEAL TO BE FORWARDED BY COLLECTOR.

It is the duty of the collector, under the provisions of subsection M of section 3, tariff act of 1913, to transmit with the invoice the notice of appeal to reappraisement, such appeal being one of the papers appertaining to the invoice.

United States *v.* Loeb (107 Fed., 692) and G. A. 7563 (T. D. 34455) cited. G. A. 5694 (T. D. 25336) followed.

United States General Appraisers, New York, October 23, 1914.

In the matter of reappraisement 76293 of Arthur Walker & Co. (Inc).

Before Board 1 (McCLELLAND, SULLIVAN, and BROWN, General Appraisers).

McCLELLAND, *General Appraiser:* It appears that in the appraisement of the merchandise covered by the invoice which accompanies his appeal the appraiser advanced the value of the contents of cases

2034 and 2035 from 13d. to 13½d., and that from this advance of the appraiser an appeal to reappraisement was regularly taken by the importers. This appeal, bearing date of August 18, 1914, which is a part of the record, is addressed to the collector in the following form:

SIR: As we consider the appraisement made by the United States appraiser too high *on all items advanced* imported by Arthur Walker & Co. (Inc.), in the *Barbarossa* from Bremen, we have to request that the same may be reappraised by a general appraiser in accordance with law.

This appeal came on to be heard by the single general appraiser on September 18, 1914, on which day a decision was made by the said general appraiser sustaining the value of such merchandise expressed on the entry.

Thereafter and on the 21st day of September, 1914, the importers filed another appeal, also addressed to the collector, in the following form:

SIR: As we consider the reappraisement made by the United States General Appraiser too high on three cases 2031–3 imported by Arthur Walker & Co. (Inc.), in the *Barbarossa* from Bremen, we have to request that the same may be reappraised by the Board of General Appraisers in accordance with subsection 13, section 28, act of August 5, 1909.

And this appeal having come on to be heard objection is made by the Government to the jurisdiction of the board upon the grounds—

First. That from the value fixed by the general appraiser on the contents of cases 2034 and 2035 no appeal to re-reappraisement by a board of three general appraisers has been lodged with the collector;

Second. That the appeal filed with the collector seeking review by a board of three is in express terms against the values found on reappraisement of the contents of cases 2031–3, which have not been the subject of reappraisement, not having been included in the appeal for review by the single general appraiser, and which were not advanced in value by the local appraiser.

Against the Government's objection to the jurisdiction of the board as thus stated our attention is directed to United States *v.* Loeb (107 Fed., 692), wherein it was held in substance that the board had no concern with the form of the appeal to reappraisement, and that there was nothing in the language of the law which required the collector to transmit the importers' notice of dissatisfaction with the value found on appraisement to the Board of General Appraisers. We quote the following from the opinion of the court:

The language of the section does not direct the collector to transmit to the board the importer's notice of dissatisfaction or any signification of his own dissatisfaction. The section apparently does not contemplate that the board shall be informed as to the circumstance whether their jurisdiction is sought by the importer or by the collector. There is no conceivable reason why the board should be informed of this circumstance. It is not one which could

properly influence their determination or their action in any way. Their duty is confined to examining and deciding the case submitted to them, and the single question involved in such a case is the dutiable value of the merchandise.

We can not but believe that the court was led to this conclusion by a faulty record. The language of the customs administrative act, governing the proceedings in reappraisement cases, was substantially the same when the court so ruled as it is to-day, the only material change being in the time allowed for the filing of appeals.

The record in the case at bar illustrates the confusion and disorder which might result if the practice contemplated by the court was followed.

Transmitted with the appeals above referred to is the invoice covering the cases of merchandise described in each of the appeals, but upon said invoice there are also described the contents of 12 additional cases; or, in other words, the invoice covers the contents of 14 cases of merchandise. Had the collector failed to transmit with the invoice the appeal to reappraisement by a single general appraiser, and had the court's dicta in the Loeb case, *supra*, been followed, the general appraiser would have been required to reappraise all of the merchandise described on the invoice, while against the values fixed upon the contents of 12 out of the 14 cases neither the collector nor the importers had made any protest nor sought any review.

Let us assume, for the sake of argument, that the general appraiser had advanced the values of the contents of the 12 cases not covered by the appeal lodged with the collector; then and in that case it must be apparent, even to the lay mind, that such advanced values would have had no warrant in law.

Again, when the second appeal noted above was filed asking for a review by a board of three general appraisers, had the collector transmitted the invoice without the appeal and had the board again followed the court's dicta in the Loeb case, *supra*, it would have had to review the values fixed on the contents of the entire 14 cases of merchandise described on the invoice, regardless of the fact that the appeal was in express language limited to the contents of three such cases which had not even been the subject of review by a single general appraiser.

If throughout the years since the Loeb case, *supra*, was decided the collector had withheld from the board notices of appeal to reappraisement and the general appraisers and the boards of general appraisers had taken jurisdiction in all cases where the papers were transmitted by the collector, it would have followed that in each case, in the absence of the information which only the appeal contained, all of the merchandise covered by the invoices transmitted would have had to be reappraised. This could not have failed to result in

chaotic conditions in administration and business circles, to say nothing of the volume of time and labor expended in making the reappraisements.

We can not believe that Congress ever intended to provide for such a loose procedure in reappraisement cases. Such a practice would make the collector, a purely administrative officer, the sole judge of the validity of every appeal to reappraisement, even where he himself was the appellant.

In subsection M of section 3 of the tariff act of 1913 in case of appeal to reappraisement either by the collector or by the importer, the collector is required to "transmit the invoice and *all the papers appertaining thereto* to the board of nine general appraisers to be by rule thereof duly assigned for determination." (Italics are ours.) That the notice of appeal appertains to the invoice in a matter of reappraisement it is only necessary to refer to the two appeals hereinbefore quoted and discussed. There is no room for doubt that under the statute it is the duty of the collector to transmit the notice of appeal with the invoice.

In subsection M, *supra*, it is also expressly provided that general appraisers and boards of general appraisers in hearing and determining reappraisements may act both judicially and inquisitorily.

In G. A. 7563 (T. D. 34455), passing upon the question of whether an appeal filed by the collector with the Board of General Appraisers after the statutory time for the taking of such appeal had expired was valid and gave the board jurisdiction, the general appraiser, among other things, said:

> Trials in reappraisement cases are very often necessarily long drawn out, and not only involve the taking of much testimony but occupy much time of lawyers in the preparation and trial of their cases, as well as the time of reporters in taking and transcribing the testimony of witnesses. In addition, there is the time of the general appraiser presiding at the trial and reading the record preparatory to a decision. If the opinion of the law expressed by the Assistant Attorney General that it is the function of the collector to pass upon the regularity of the appeal, even when he is the appellant, is sound, it might follow that all of the time thus occupied, as well as the labor involved, was absolutely wasted, for the collector might determine the appeal irregular and consequently invalid as well after the trial as before it. There is nothing in the statute with which I am familiar which justifies any such view, and it is impossible to conceive that Congress could even have contemplated such an absurd practice.
>
> The Board of General Appraisers is a judicial tribunal, and its members exercise under the law practically none other than judicial functions.

In G. A. 5694 (T. D. 25336), in reviewing on protest the action of a single general appraiser and a board of three general appraisers in advancing the values of merchandise which had not been advanced by the local appraiser, it was held that it was not within the jurisdic-

tion of either the general appraiser or board of three general appraisers to review the appraised values of such merchandise unless such review was demanded in the notice of appeal to reappraisement. The appeal was limited to the merchandise advanced by the local appraiser, and the protest against the assessment of duties on the values found by the board on the merchandise not covered by the appeal was sustained.

Following the same rule this appeal must be and is dismissed.

(T. D. 34860—G. A. 7620.)

Show cards or advertising signs, cardboard chief value.

Placards, show cards, or advertising signs, the foundations of which are composed of either plain or coated cardboard upon which have been superimposed letters or designs die cut from differently colored sheets of surface-coated paper, and in each of which signs, as completed, the cardboard foundation constitutes the component material of chief value, are properly dutiable as manufactures of paper under paragraph 420 of the act of 1909, as claimed, rather than as manufactures in chief value of surface-coated paper under paragraph 411 of said act, as assessed.

United States General Appraisers, New York, October 23, 1914.

In the matter of protests 538146, etc., of Overton & Co. *et al.* against the assessment of duty by the collectors of cusoms at the ports of New York and Philadelphia.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

FISCHER, *General Appraiser:* The articles in question, consisting of placards, show cards, or advertising signs composed of cardboard and surface-coated paper, were assessed with duty at 5 cents per pound and 30 per cent ad valorem under the following provision in paragraph 411 of the act of 1909:

411. Papers with coated surface or surfaces, not specially provided for in this section, five cents per pound; * * * and all other articles composed wholly or in chief value of any of the foregoing papers, not specially provided for in this section, * * * five cents a pound and thirty per centum ad valorem; * * *.

There are several claims alleged in the protests, but the one chiefly relied upon by the importers—as evidenced by the statement of their counsel at the time of the hearing—is that the articles in question are properly dutiable at 35 per cent ad valorem under paragraph 420 of said act, which reads as follows:

420. Manufactures of paper, or of which paper is the component material of chief value, not specially provided for in this section, thirty-five per centum ad valorem.

The evidence and the samples submitted established these facts: The material which forms the foundation for each of the signs in question is a cardboard, in some instances entirely plain, while in

others it has a surface coating on one side; that, superimposed on this cardboard by means of pasting, pressing, and die cutting, are one or more thin sheets of surface-coated paper, each sheet usually of a different color; that as each sheet is added the entire sign is placed in a press, where, by the use of dies, certain designs, letters, etc., are cut out of said sheet and pressed upon the face of the sheet immediately under it, producing an embossed effect thereon of contrasted color; that a separate and similar operation is performed on each sheet of paper thus added to the sign, with the result that there is visible on the face of the completed sign—exclusive of its coated cardboard foundation—only such portions of the differently colored sheets of surface-coated paper as were separately die cut and embossed thereon in each operation. There is no lithographic printing involved in any of the processes employed in the manufacture of these signs.

No dispute whatever arises respecting such of the signs as are shown to be in chief value of plain cardboard, nor even concerning those proved to be in chief value of surface-coated paper, both sides to this controversy conceding the former to be dutiable as manufactures of paper under paragraph 420, and the latter as manufactures in chief value of surface-coated paper under paragraph 411.

The sole question, then, to be determined is, What is the correct dutiable classification of the signs composed in chief value of coated cardboard?

Counsel for the Government argues that, as signs composed in chief value of plain cardboard are unquestionably dutiable as manufactures of paper, so also must those signs shown to be in chief value of coated cardboard be properly classifiable for duty as manufactures in chief value of coated paper. Of course, this conclusion is necessarily based upon the assumption that coated cardboard, when found in a manufactured article, can no longer be regarded as cardboard, but must, for purposes of dutiable clasification, be treated as paper, and that where the cardboard happens to be coated, then it must be deemed to be coated paper.

Counsel for the importers, however, takes the contrary view. He insists that cardboard, plain or coated, and whether or not incorporated in a manufactured article, is nevertheless known and recognized in trade and commerce as cardboard, and that only as such can it be regarded for tariff purposes; that in the absence of a specific provision in the tariff for articles made of cardboard, plain or coated, such articles must necessarily fall into and be governed by the general provision for manufactures of paper.

Both on the facts and the law we believe the contention of the importers to be well founded. Here we have certain signs which the

evidence shows to be composed in chief value of either plain or coated cardboard. Where the cardboard is plain no question concerning its dutiability arises, but where the cardboard happens to have a coating on its surface we are asked to ignore the fact that it is a cardboard at all and to arbitrarily assume that it is a surface-coated paper and dutiable accordingly.

It is well settled commercially, and equally a matter of common knowledge, that, while cardboard may primarily be termed a manufacture of paper, it does not necessarily follow that paper is or may be called cardboard. The specific and denominative provision in paragraph 411 covers surface-coated paper and manufactures thereof. It is difficult for us to conceive how that provision may be extended to likewise embrace surface-coated cardboard.

That there is a radical difference between cardboard and paper is plainly set forth in the following extract from the opinion of Judge Smith in the case of United States *v.* Meyerson (2 Ct. Cust. Appls., 225; T. D. 31953), wherein certain cardboard embossed in imitation of grain leather was involved:

> The goods are manufactured from paper pulp and belong to that class of manufactures from pulp known as cardboard. Cardboard is distinguished from paper as commonly understood in this, that it is thicker and heavier, stiffer and less flexible. Cardboard is not made on the usual paper machine, but on a special machine which winds up on a cylinder sufficient pulp or several layers of pulp to constitute the thickness required. It is not dried on the cylinders as is paper. Neither is it calendered in the same way. The board is taken from the cylinder wet and is dried in the air, which gives it a stiffness not possessed by paper. Moreover, as it can not be wound on the cylinder without splitting, it in calendered in sheets and not on the roll, as is paper. To make plain board the pulp is run through smooth rollers. Embossed board is produced by passing the pulp between a smooth roller and an indented roller. The testimony further discloses that cardboard is the generic name for paper boards and that in trade and commerce that term embraces the various boards, which, on account of their color and appearance and the pulp material of which they are made, have received such special names as wood board, strawboard, chip board, plain board, red-fiber board, embossed-leather board, and so forth. As already stated, the plain board in this case was classified by the collector as cardboard, while the embossed board, composed of the same material, manufactured in the same way, intended for the same general uses, and differing in no way from the plain board, except that it had been given the appearance of grain leather with an indented roller, was classified as paper. Such a difference in classification may have been moved by considerations of the higher duty, but that classification can scarcely be said to be distinguished by its consistency.

We therefore find as follows:

(1) That the show cards or advertising signs covered by the various protests and case numbers set forth in Schedule A (which schedule is hereto annexed and made part hereof) are composed in chief value of either plain or coated cardboard, and we therefore hold

such articles to be properly dutiable as manufactures of paper under said paragraph 420. That particular claim in each protest enumerated in said Schedule A is accordingly sustained, but only so far as it covers the show cards or signs contained in the specific cases therein enumerated.

(2) That the merchandise covered by the various protests enumerated in Schedule B (which schedule is also hereto annexed and made part hereof) consists of articles proved or conceded to be in chief value of surface-coated paper, and we therefore hold said articles to be properly dutiable under said paragraph 411, as assessed.

The protests enumerated in Schedule A are sustained to the extent indicated in our first finding; in all other respects said protests, together with all those enumerated in Schedule B hereof, are overruled.

The collector's decisions are modified accordingly.

(T. D. 34861—G. A. 7621.)

Glove leather.

Split sheepskin fleshers, tanned by the acid or formaldehyde process, specially finished for use in the making of gloves, and generally used for that purpose, are classifiable as glove leathers, and under the *eo nomine* provision therefor in paragraph 359 of the tariff act of 1913 are assessable with duty accordingly.—G. A. 7075 (T. D. 30799) cited and distinguished.

United States General Appraisers, New York, October 23, 1914.

In the matter of protests 734028, etc., of Mills & Gibb *et al.* against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers; Sullivan, G. A., not participating).

McClelland, *General Appraiser:* The merchandise which is the subject of these protests was assessed for duty at the rate of 15 per cent ad valorem under paragraph 359 of the tariff act of 1913 as chamois skins, and it is claimed that duty should have been assessed at only 10 per cent ad valorem under the provision for glove leathers in the same paragraph. The alternative claim for free entry was not pressed on the trial and is so manifestly without merit that it is dismissed.

On two of the invoices covered by the protests the merchandise is returned by the appraiser as "chamois skins" and on the third as "glove chamois skins," but, regardless of this difference in official return, it is not questioned that the merchandise is all of the same character and finish.

The following special report of the appraiser to the collector on one of the protests serves to show the theory upon which that officer's advisory returns were made:

The merchandise described on the invoice as doeskins are a washable chamois skin, dressed and finished by the same process as the chamois skins subject of G. A. 7075 (T. D. 30799). Paragraph 359 provides for chamois skins and glove leather; and as this merchandise is commercially known as chamois skins, it was returned for duty as such at 15 per cent ad valorem under the former part of said paragraph in harmony with the decision cited.

It is evident upon reading the record that it was the Government's theory that there was a uniform, definite, and general meaning to the term "chamois skin" in the leather trade other than the ordinary meaning, which would include the leather in question and that therefor the collector's assessment under the *eo nomine* provision for such skins in paragraph 359 was justified, but the effort to establish such trade understanding failed, inasmuch as among the witnesses of wide experience there was much diversity of view as to whether such skins as those under consideration were included within, or excluded from, the term "chamois skin."

Under these circumstances it requires neither argument nor the citation of a single authority to support the conclusion that, in so far as this merchandise is concerned, the words "chamois skin" must be given their ordinary meaning. The same may be said of the manifest purpose of the protestants to establish such a uniform meaning for the term "glove leather" as would include so-called doeskin similar to that involved.

It is an undoubted fact that leather of this character—of this peculiar finish—has been known to the markets of the United States only two or three years, but it is equally the fact that for many years prior thereto chamois skins, both natural and bleached, have been known in our trade and commerce.

Doeskin leather is always white, while the chamois of commerce is both natural (yellow) and white. Each of these has its origin in split sheepskin, the flesh side, known technically and commercially as "flesher." The differences found in the finished articles result therefore from the varied tanning or bleaching processes to which each has been subjected.

In the preparation of what are commonly known as the chamois skins they are first pickled in sulphuric acid and muriatic acid salt. They are then immersed in raw fish oils and slowly tanned, after which they are hung in heated rooms for the purpose of oxidizing the oils. If white chamois is desired the skins are then bleached by exposure in the open air. The processes of preparation of so-called doeskins are somewhat different. The tanning is accomplished through what is known as the acid or formaldehyde process, which

is more or less secret, and the bleaching results simultaneously with the tanning. Witnesses unite in saying that, whereas it takes weeks to produce the oil-tanned chamois skins, it now takes but days to produce doeskin.

The appraiser, in support of his advisory classification of the merchandise as chamois skins, states in his special report, *supra*, that—

> The merchandise described on the invoice as doeskins are a washable chamois skin, *dressed and finished by the same process* as the chamois skins subject of G. A. 7075 (T. D. 30799). [The italics are ours.]

It is very evident that this statement of the appraiser is erroneous, at least in so far as it states that the skins in question are dressed and finished by the same process as the skins involved in the case cited. In that case the only issue was whether the skins involved were subject to duty as chamois skins or as split leather. The protestants contended that, as they were not produced from the skin of the antelope, they were not therefore chamois skins; but the Government's contention that they were the chamois skins of commerce was sustained. That they were the natural or yellow chamois tanned by the fish-oil process is evidenced by the board's third finding of fact, as follows:

> That among the uses thereof are the making of gloves, vests, dress protectors, and the washing of carriages.

Throughout the record testimony there appears unmistakable evidences of such bias on the part of several of the witnesses examined as justify the conclusion that frank statements were at least retarded by interest. On the one side were the domestic producers of similar leather, manifestly desirous of sustaining the higher rate of duty; and on the other, importers equally desirous of supporting the claim for the lower rate of duty. The following extracts from the testimony of the witness Parke is illustrative, we think, of this fact:

> Q. Do you deal in this stuff [referring to Exhibit 1] at wholesale?—A. Yes.
>
> Q. Now, did you hear the first witness testify as to its exclusive use in the making of gloves?—A. I did not notice that he made that positively.
>
> Q. Do you know that it has any other use than for making gloves?—A. *About 80 per cent of our output is for toilet chamois.*
>
> * * * * * * *
>
> Q. No; does the trade you come in contact with throughout the United States use the term chamois skin and do they know what it means; that is, has it a general meaning throughout the trade?—A. Yes.
>
> Q. Are you familiar with that general meaning?—A. Yes, sir.
>
> Q. What is it?—A. Any material made from a flesher used for face or polishing or washing purposes. It is a general trade term.
>
> Q. Take Exhibit 1, under what name is that sold?—A. It would be sold to the glove trade; it would be sold as doeskin. If sold to the drug trade and wholesale houses, it would be sold as white chamois.
>
> * * * * * * *

Q. If you received an order for white chamois would you send this article [Exhibit 1] or the article made by the oil process?—A. We would send this article because this other would depend on blending. We would send this article right here [Exhibit 1].

* * * * * * *

Q. From your own knowledge of the tanning process, are you prepared to state that all of that 25 per cent, which you call white chamois, is tanned the same way as Exhibit 1?—A. The result is the same. I can not say how it is tanned.

Q. That is, the finished product looks the same?—A. It is the same.

Q. You don't actually know whether this so-called white chamois was tanned by the oil process or by the acid process?—A. Yes.

* * * * * * *

Q. (By General Appraiser McClelland.) Now, you have finished some in your factory for making gloves?—A. Yes; a quantity of them.

Q. Were those skins that you sold for making gloves subjected to any different process from Exhibit 1 which you see before you?—A. I should not say so; no.

Q. *Were those doeskins sold for gloves submitted to any further process than the skins sold to the drug trade?* A. Yes; *additional finishing.*

Q. *Especially prepared for making gloves?*—A. Yes, sir; *in the finish.*

It is significant to note that in this quoted portion of his testimony the witness first states, referring to leather like Exhibit 1, that about 80 per cent of the output of his factory is used as toilet chamois and not for making gloves, whereas later he was led to admit that the leather similar to Exhibit 1 produced by his factory for glove making is subjected to a special process of finishing to which the toilet chamois is not subject, and that this special finish is to fit it for use in glove making.

We do not think it necesary in passing upon this issue to determine whether the provision for chamois skins or that for glove leathers in paragraph 359 is the more specific. It is our view that if a leather has been especially prepared, either by original tanning or by peculiar dressing and finish, to make it especially useful for making gloves and consequently unfit practically or commercially for any other use, it must be classified as glove leather and take duty accordingly, regardless of whether it looks like some other kind of leather, or may in exceptional instances be used for other purposes than glove making.

The testimony that substantially all so-called doeskin leather is used in the making of gloves is overwhelming, and we accordingly find as a fact that the merchandise in question is glove leather, and hold it to be subject to duty at the rate of 10 per cent ad valorem, as claimed.

Decisions of the collector reversed.

(T. D. 34862—G. A. 7622.)

Tagua-nut slabs.

Tagua nuts sawed into slabs after the outer shells have been removed are no longer classifiable under the provision for tagua nuts in paragraph 620, tariff act of 1913, nor are such slabs dutiable as manufactures of vegetable ivory (par. 369). In the absence of any specific provision therefor they must be classified as "articles manufactured, in whole or in part, not provided for in this section" (par. 385).—Abstract 31142 (T. D. 33120), G. A. 6596 (T. D. 28177), and Zanmati *v.* United States (153 Fed., 880; T. D. 28054) cited.

United States General Appraisers, New York, October 23, 1914.

In the matter of protest 735961 of McLaughlin & Freeman against the assessment of duty by the collector of customs at the port of Boston.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers; Sullivan, G. A., absent).

McClelland, *General Appraiser:* The merchandise is described on the invoice as "3 bags sawed vegetable ivory." It was returned by the appraiser as "manufactures of vegetable ivory" and assessed for duty at 35 per cent ad valorem under paragraph 369 of the tariff act of 1913. Claim for free entry is made under paragraph 620 of said act, which reads, "tagua nuts," or that duty should have been assessed at 10 or 15 per cent ad valorem under paragraph 385. A further claim is made for a discount of 5 per cent of the duties under section 4, paragraph J, subsection 7, of said act.

When the case was called for hearing it was submitted for decision by counsel for protestants without the introduction of any evidence in support of the claims made. The Government, however, produced the testimony of a witness who was familiar with tagua nuts and the processes of their treatment down to the condition of the imported article, from which it appears that they have a double shell. Upon being subjected to heat for a number of days the outer shell becomes dry and the nuts are then placed in revolving drums until most of the outer shell falls off. Such portion of it as remains is later removed by a special tool. The nuts are afterwards sorted or graded as to size, and finally cut by a circular saw into slabs. It can not be said that these slabs after having been subjected to these processes are any longer tagua nuts.

The tariff act of 1909 and similar acts of earlier dates provided for "vegetable ivory in its natural state" and "vegetable ivory," but in the tariff act of 1913 there is no provision for vegetable ivory, and tagua nuts are provided for in paragraph 620 of the free list.

In Abstract 31142 (T. D. 33120) we passed upon similar merchandise where free entry was claimed under the provision for

vegetable ivory in paragraph 596 of the act of 1909. In that case we said:

The official sample representing the merchandise consists of vegetable ivory sawed into slabs without further preparation or advancement.

In G. A. 6596 (T. D. 28177) lotus roots and other vegetable substances, cut into slices and dried, were held by the board to be dutiable as "vegetables in their natural state," and in Zanmati *v.* United States (153 Fed., 880; T. D. 28054) mushrooms which had been cleaned, sliced, and dried were also held to be dutiable as vegetables in their natural state.

It therefore follows, in the same line of reasoning, that vegetable ivory simply sawed into pieces, and not having been subjected to any process whereby its condition is advanced beyond the natural state, is entitled to free entry, as claimed.

In harmony with the cases cited, we hold that the mere sawing of these tagua nuts into slabs does not constitute such slabs manufactures of vegetable ivory, and therefore it is our view that the assessment of duty by the collector was erroneously made.

In the absence of any provision for tagua nuts or vegetable ivory advanced beyond the natural state, these slabs clearly fall under the catch-all provision in paragraph 385 for "all articles manufctured, in whole or in part, not provided for in this section," and are subject to duty at 15 per cent ad valorem. That claim is therefore sustained, the protest being overruled in all other respects.

The decision of the collector is reversed accordingly.

(T. D. 34863—G. A. 7623.)

Radiogen-Trinkwasser—Radium bromide in water.

The words "dutiable under this section" in the first clause of paragraph 17, act of 1913, refer to articles upon which a duty has been levied, and have no application to articles which would otherwise be on the free list. Therefore, chemical and medicinal compounds, combinations, and similar articles which would be classifiable under the free list in the act of 1913 are not made dutiable at 20 per cent ad valorem under paragraph 17 when imported in individual packages of 2½ pounds or less.

United States General Appraisers, New York, October 23, 1914.

In the matter of protest 740678 of Morgenstern & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers).

Brown, *General Appraiser:* The merchandise is stated by the appraiser's report to consist of—

so-called Radiogen-Trinkwasser, radium bromide dissolved in distilled water, used as a medicinal preparation, especially in the treatment of cancer of the stomach.

It was classified as a medicinal compound in packages of less than 2½ pounds gross weight at 20 per cent ad valorem under paragraph 17, act of 1913.

It is claimed to be free of duty under paragraph 585, reading:

585. Radium and salts of, radioactive substitutes, selenium and salts of.

Upon the above statement this substance is identical with the Radiogen-Trinkwasser held to be free of duty under paragraph 659, act of 1909, in G. A. 7524 (T. D. 34052), and the sole question remains as to whether paragraph 17 of the act of 1913 takes it out of said ruling when imported in packages of less than 2½ pounds gross weight.

Paragraph 17 provides:

Chemical and medicinal compounds, combinations and all similar articles dutiable under this section, except soap, whether specially provided for or not, put up in individual packages of two and one-half pounds or less gross weight (except samples without commercial value) shall be dutiable at a rate not less than 20 per centum ad valorem: *Provided*, That chemicals, drugs, medicinal and similar substances, whether dutiable or free, imported in capsules, pills, tablets, lozenges, troches, ampoules, jubes, or similar forms, shall be dutiable at not less than 25 per centum ad valorem.

It is to be noted that in dealing with chemical and medicinal compounds, etc., "put up in individual packages of two and one-half pounds or less," the Congress limits the application of this provision to "articles dutiable under this section." While the latter part of the paragraph, referring to chemicals, drugs, medicinal, and similar substances, "imported in capsules, pills, tablets, lozenges, * * * or similar forms" applies to all such articles, whether dutiable or free.

This difference in language in dealing with the two classes indicates a congressional intent to make the first part of the paragraph apply to articles on which duty is levied and not to articles in the free list, while the broader language of the latter portion of the paragraph clearly applies to all articles covered by the tariff act.

In view of this distinction, thus plainly set forth by the Congress, we hold that paragraph 17 does not change the classification of the merchandise in question under the principle established in G. A. 7524 (T. D. 34052).

It may be further noted that paragraph 585 of the act of 1913 is broader and more inclusive in its language than paragraph 659 of the act of 1909, under which G. A. 7524 was decided.

Therefore, in conformity with that decision and the views above expressed, we sustain the claim for exemption from duty.

Protest sustained.

(T. D. 34864—G. A. 7624.)

Isotonique sea water.

Isotonique sea water, used for medicinal injections in the treatment of chronic constipation, eczema, scrofula, neurasthenia, and other diseases, is properly dutiable by virtue of the proviso to paragraph 17, act of 1913, at 25 per cent, as a medicinal or similar substance, when imported in capsules, pills, tablets, lozenges, troches, ampoules, jubes, or similar forms.

United States General Appraisers, New York, October 23, 1914.

In the matter of protest 744615 of Stone & Downer Co. against the assessment of duty by the collector of customs at the port of Boston.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers; Sullivan, G. A., not participating).

Brown, *General Appraiser:* The merchandise here involved is stated by the appraiser to consist of—

Isotonique sea water, imported in ampoules for medicinal purposes, and in view of the proviso to paragraph 17 of the present tariff act was returned for duty at 25 per cent ad valorem.

The provision relied on in paragraph 17 provides that—

Chemicals, drugs, medicinal and similar substances, whether dutiable or free, imported in capsules, pills, tablets, lozenges, troches, ampoules, jubes, or similar forms, shall be dutiable at not less than 25 per cent ad valorem.

It is claimed to be free of duty as a crude mineral under paragraph 549.

The importer testified (record, p. 3) that—

This sea water is taken from the sea near France, at a great depth, and at some expense and trouble, but, nevertheless, it is sea water; they go down to a depth where they get the pure water.

He claims in his evidence that it is not medicinal, but admitted that it is usually imported as sea water for the use of surgeons.

The Government introduced in evidence a circular, printed in the French language, entitled "Plasma de Quinton," under which name it is sold, which came along with the official sample, evidently a circular describing it for sale, and which gives the treatment for its use in a number of diseases, such as constipation, tuberculosis, scrofula, eczema, neurasthenia, and other maladies. A portion of this circular was translated into English, and the translation put in evidence and admitted to be correct by the importer, which describes the reasons why an injection of this sea water will have effect in enteritis, diarrheal or muco-membraneous, and chronic constipation, saying:

The efficacy of the treatment is such that in 15 per cent of the most rebellious muco-membraneous enteritis or most obstinate constipations yield from the

first or second injection. In 70 per cent the cure is obtained at the sixth or eighth injection. Setbacks occur in only about 15 per cent.

It also says, among other things:

After having established the marine origin of animal life, Quinton has demonstrated that all superior organisms have maintained for the vital medium of their cells the marine medium of their origin. Sea water, diluted only, is the "culture liquid" of organic cells. It is easy to see, therefore, how sea water acts subcutaneously injected. It restores to the enfeebled organism, whose plasma is altered in its composition, the vital medium itself of the healthy organism. At its contact the cells, returned to their natural medium, take up new life with their former ancient energy, just as one sees a colony of microbes pick up and prosper as soon as it gets its favorite bouillon culture.

We are constrained to hold from the above statement of facts that this merchandise is a medicinal preparation or similar article within the meaning of paragraph 17, and even if it otherwise would be free under paragraph 549, as claimed, being imported in ampoules or similar forms, it must be held dutiable at 25 per cent, and the collector's classification is therefore affirmed.

As to the policy of Congress in enacting this provision we have nothing to do, but that its intent was to include merchandise like this seems plain.

Protest overruled.

(T. D. 34865.)

Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, Somerville, and Hay.

BEFORE BOARD 1, October 17, 1914.

No. 86717.—GOATSKINS.—Protests 739367, etc., of Kornbluth & Harris et al. (New York). Opinion by McClelland, G. A.

G. A. 7569 (T. D. 34493) followed as to goatskins or moufflons held dutiable by similitude under the second provision of paragraph 348, tariff act of 1913.

BEFORE BOARD 1, October 20, 1914.

No. 86718.—GOATSKINS.—Protest 744894 of H. Eulenstein (New York). Opinion by McClelland, G. A.

Dressed goatskins classified under the first provision of paragraph 348, tariff act of 1913, were held dutiable under the second provision thereof, as claimed. G. A. 7569 (T. D. 34493) followed.

No. 36719.—Grain Leather.—Protest 462560 of A. G. Spalding & Bros. and protest 526289 of D. B. Fleming & Sons (New York). Opinions by McClelland, G. A.

Football and bag and strap leather, classified under paragraph 451, tariff act of 1909, was held dutiable as grain leather (par. 450) on the authority of Spalding *v.* United States (3 Ct. Cust. Appls., 356; T. D. 32910).

No. 36720.—Printing Paper.—Protest 750704 of Walther & Co. (New York). Opinion by McClelland, G. A.

Merchandise classified as paper not specially provided for under paragraph 332, tariff act of 1913, was held dutiable as printing paper (par. 322). Abstract 36217 (T. D. 34677) followed.

No. 36721.—Cotton Bandings.—Protest 752211 of Knauth, Nachod & Kuhne (New York). Opinion by McClelland, G. A.

Merchandise classified as manufactures of cotton under paragraph 266, tariff act of 1913, was held dutiable as cotton bandings (par. 262).

No. 36722.—Wax Fruits.—Protest 744917 of Poirier & Lindeman Co. (New York). Opinion by McClelland, G. A.

Pieces of wax resembling various fruits, designed for use in waxing thread, classified as artificial fruit under paragraph 438, tariff act of 1909, were held dutiable as manufactures of wax (par. 462). United States *v.* Dieckerhoff (4 Ct. Cust. Appls., 384; T. D. 33796) followed.

No. 36723.—Burgundy Pitch.—Protest 615237 of American Druggists' Syndicate (New York). Opinion by McClelland, G. A.

A commodity returned by the appraiser as common resin and classified under paragraph 20, tariff act of 1909, was held free of duty as Burgundy pitch (par. 525).

No. 36724.—Fancy Matches.—Protest 639199–42088 of C. L. Benson (Chicago). Opinion by McClelland, G. A.

On the authority of United States *v.* Masson (5 Ct. Cust. Appls., —; T. D. 34103) matches known as cigar lights were held dutiable as fancy under paragraph 436, tariff act of 1909.

No. 36725.—Sticks for Umbrellas.—Protest 726153 of Otto Gerdau Co. (New York). Opinion by McClelland, G. A.

Boxwood sticks in the rough, less than 14 inches in length, classified as wood, unmanufactured, under paragraph 203, tariff act of 1909, were held entitled to free entry as sticks for umbrellas (par. 713). Abstract 36342 (T. D. 34742) followed.

No. 36726.—Manufactures of Palm Leaf.—Protests 731595, etc., 742412, and 750658, etc., of Max Frankel Co. (New York). Opinions by McClelland, G. A.

Bottle covers and caps classified as manufactures of straw were found to be manufactures of palm leaf and held dutiable accordingly under paragraph 368, tariff act of 1913.

No. 36727.—Protests Overruled.—Protest 758963 of Henrie Clauss (Cleveland), protests 732619, etc., of J. A. Bonnet (Eagle Pass), protests 741143, etc., of David Baird & Son et. al. (Louisville), protests 364696, etc., of M. J. Corbett & Co. et al. (New York), protests 747624, etc., of Prince Manufacturing Co. (Ogdensburg), and protests 752168, etc., of F. B. Vandegrift & Co. et al. (Philadelphia). Opinions by McClelland, G. A.

Protests unsupported; overruled.

No. 86728.—PROTESTS DISMISSED.—Protest 744034 of Waters Laboratories (New York). Opinion by McClelland, G. A.

Protest dismissed upon stipulation of counsel.

No. 86729.—PHONOGRAPH DISKS—AMERICAN GOODS RETURNED.—Protest 610895 of Fung Yuen (San Francisco). Opinion by Sullivan, G. A.

Phonograph disks, claimed to have been manufactured in the United States, exported to China, and then returned to the United States as imperfect, classified as parts of phonographs under paragraph 468, tariff act of 1909, were claimed free of duty as American goods returned (par. 500). Protest overruled, the regulations not having been complied with.

No. 86730.—BRASS SNAPS FOR NECKLACES—JEWELRY.—Protest 667397 of Lippmann, Spier & Hahn (New York). Opinion by Sullivan, G. A.

Brass snaps for necklaces were held dutiable as parts of jewelry under paragraph 448, tariff act of 1909. United States *v.* Goldberg (3 Ct. Cust. Appls., 282; T. D. 32573) followed.

No. 86731.—ROSARIES.—Protest 755055 of American Bead Co. (New York). Opinion by Sullivan, G. A.

Rosaries were held dutiable according to the component material of chief value as manufactures of bone under paragraph 368, tariff act of 1913.

No. 86732.—ROSARIES—WRONG CLAIM.—Protest 755647 of P. J. Kennedy & Sons (New York). Opinion by Sullivan, G. A.

Rosaries classified as articles in chief value of beads under paragraph 333, tariff act of 1913, were found to be composed chiefly of horn and dutiable under paragraph 368. Protest overruled, that claim not having been made.

No. 86733.—PROTESTS OVERRULED.—Protests 590417, etc., of Knauth, Nachod & Kuhne et al. (New York). Opinion by Sullivan, G. A.

Protests unsupported; overruled.

No. 86734.—WOOL AND JUTE FABRICS.—Protest 729550 of F. B. Vandegrift & Co. (Philadelphia). Opinion by Brown, G. A.

Merchandise classified as a manufactured article made wholly or in part of wool under paragraph 378, tariff act of 1909, was held dutiable as a manufacture of flax (par. 358). Hartranft *v.* Meyer (135 U. S., 237) followed.

No. 86735.—FISH IN TINS.—Protests 741786–45712, etc., of C. L. Benson, and protests 457792–35405, etc., of International Forwarding Co. et al. (Chicago). Opinions by Brown, G. A.

United States *v.* Haaker (4 Ct. Cust. Appls., 471; T. D. 33884) and United States *v.* Miller (5 Ct. Cust. Appls., —; T. D. 34443) followed as to fish in tins.

No. 86736.—PROTESTS OVERRULED.—Protests 729472, etc., of E. H. Bailey & Co. (Philadelphia). Opinion by Brown, G. A.

Protests unsupported; overruled.

No. 86737.—PROTESTS DISMISSED.—Protests 747710, etc., of H. J. Baker & Bro. (New York). Opinion by Brown, G. A.

Protests dismissed upon stipulation of counsel.

BEFORE BOARD 2, OCTOBER 20, 1914.

No. 36738.—SCRAP PLATINUM.—Protest 730938 of E. M. Mathis (Ogdensburg). Opinion by Fischer, G. A.

An old and damaged platinum dish originally constructed for use in the preparation of chemicals, classified as an article composed of platinum under paragraph 167, tariff act of 1913, was claimed free of duty as scrap platinum (par. 578). Protest sustained.

No. 36739.—PAPER, MACHINE MADE.—Protest 726044 of Eugene Dietzgen Co. (San Francisco). Opinion by Fischer, G. A.

Drawing paper classified under paragraph 413, tariff act of 1909, found to be machine made was held dutiable as paper not specially provided for (par. 415). Protest sustained.

No. 36740.—CHAIN-MAKING MACHINE—MACHINE TOOL.—Protest 591884 of Alfred H. Post & Co. (New York). Opinion by Fischer, G. A.

A power-driven machine which works upon brass wire by bending and cutting it in the form of rings for use in making chains was held dutiable as a machine tool under paragraph 197, tariff act of 1909, as claimed. G. A. 7559 (T. D. 34413) followed.

No. 36741.—HATS OF STRAW, GRASS, OR IMITATION HORSEHAIR.—Protest 221972 of R. L. Cochran Co. (New York). Opinion by Howell, G. A.

Untrimmed hats composed in chief value of straw or grass were held dutiable under paragraph 409, tariff act of 1897. Untrimmed hats composed of imitation horsehair were held dutiable as cotton wearing apparel (par. 314). United States *v.* Cochran (3 Ct. Cust. Appls., 57; T. D. 32349) followed. Untrimmed hats with bodies composed of grass or straw, classified as silk wearing apparel under paragraph 390, were held dutiable under paragraph 409. Protest sustained in part.

No. 36742.—TRIMMINGS.—Protests 741650, etc., of Mills & Gibb (New York). Opinion by Howell, G. A.

Protests overruled as to narrow woven fabrics of cotton with fast edges, ornamental in design, used for trimming wearing apparel, classified as trimmings under paragraph 358, tariff act of 1913.

No. 36743.—APPLIQUÉD SILK WEARING APPAREL.—Protest 738709 of K. Takayama (New York). Opinion by Howell, G. A.

United States *v.* Hamburger (5 Ct. Cust. Appls., —; T. D. 34382) followed as to merchandise classified as appliquéd under paragraph 358, tariff act of 1913. Protest sustained claiming it dutiable as silk wearing apparel (par. 317).

No. 36744.—SILK COMFORTABLES, APPLIQUÉD—DISCOUNT, AMERICAN VESSELS.—Protest 734024 of McGibbon & Co. (New York). Opinion by Howell, G. A.

Comfortables composed in chief value of silk, having silk cord around the edge, classified as appliquéd under paragraph 358, tariff act of 1913, were held not appliquéd on the authority of United States *v.* Hamburger (5 Ct. Cust. Appls., —; T. D. 34382). G. A. 7540 (T. D. 34246) followed as to the claim for a discount of 5 per cent on the merchandise which was imported in a vessel of American registration.

No. 36745.—WOVEN SILK FABRICS—SILK BRAIDS.—Protests 732978, etc., of A. J. Woodruff & Co. (New York). Opinion by Howell, G. A.

Woven fabrics in the piece were held properly classified as silk chief value under paragraph 318, tariff act of 1913. Pink and white silk braids, measuring about one inch in width, used as corset laces, were held properly classified as silk braids (par. 358). G. A. 5900 (T. D. 25987) and Abstract 25437 (T. D. 31543) followed.

No. 36746.—Cotton Braid, Picot or Loop Thread.—Protest 699615 of Bernhard Ulmann & Co. (New York). Opinion by Howell, G. A.

White cotton braid consisting of picot or loop thread, classified under paragraph 350, tariff act of 1909, was held dutiable as a manufacture of cotton (par. 332). Abstract 28058 (T. D. 32379) followed.

No. 36747.—Protests Overruled.—Protests 303785–27059, etc., of Theo. Ascher Co. et al. (Chicago). Opinion by Howell, G. A.

Protests unsupported; overruled.

No. 36748.—Union Fabrics.—Protest 724773–4628 of May & Ellis Co. (New Orleans). Opinion by Cooper, G. A.

Union fabrics composed of cotton and flax were held dutiable as flax chief value under paragraph 357, tariff act of 1909, as claimed.

No. 36749.—Flax Towels.—Protest 726165 of Forbes & Wallace (Boston). Opinion by Cooper, G. A.

On the authority of Abstract 35052 (T. D. 34279) linen towels decorated or ornamented at each end by small colored figures woven in the fabric, classified as embroidered under paragraph 349, tariff act of 1909, were held dutiable as articles composed of flax (par. 357).

No. 36750.—Cotton Articles.—Protest 726666 of Knauth, Nachod & Kuhne (New York). Opinion by Cooper, G. A.

Articles composed of cotton cloth classified under paragraph 332, tariff act of 1909, were claimed dutiable as medicinal preparations (par. 65). Protest overruled. Abstract 35821 (T. D. 34548) followed.

No. 36751.—Featherbone.—Protest 732985 of M. J. Corbett & Co. (New York). Opinion by Cooper, G. A.

Featherbone composed of cotton and bone, classified as a manufacture of cotton under paragraph 332, tariff act of 1909, was claimed dutiable as a manufacture of bone (par. 463). Protest overruled.

No. 36752.—Flax Articles—Cotton Articles.—Protest 733499 of W. H. Horstmann Co. (Philadelphia). Opinion by Cooper, G. A.

Merchandise classified as flax, embroidered, under paragraph 349, tariff act of 1909, was held dutiable as manufactures of cotton cloth (par. 332), as claimed.

No. 36753.—Darning Cotton.—Protest 733518 of John Wanamaker (Philadelphia). Opinion by Cooper, G. A.

Darning cotton classified as not exceeding 100 yards of threads was held dutiable as darning cotton in skeins less than 600 yards each under the provisions of paragraph 314, tariff act of 1909.

No. 36754.—Rugs.—Protest 743983 of J. W Hampton, jr., & Co. (New York). Opinion by Cooper, G. A.

A rug or carpet woven whole for a room, entered on November 29, 1913, was held properly classified under paragraph 391, tariff act of 1909, rather than under the act of 1913, as claimed. G. A. 7577 (T. D. 34599) followed.

No. 36755.—SNAP FASTENERS ON TAPE.—Protest 745694 of Sol. Levy (Philadelphia). Opinion by Cooper, G. A.

Snap fasteners attached to tape, classified as tape chief value under paragraph 349, tariff act of 1909, were claimed dutiable as manufactures of metal (par. 199) or manufactures of cotton (par. 332). Protest overruled. Abstract 34360 (T. D. 34026) followed.

No. 36756.—JACQUARD FIGURED UPHOLSTERY GOODS.—Protests 737792, etc., of Bassett, McNab & Co. (New York). Opinion by Cooper, G. A.

Merchandise classified as Jacquard figured upholstery goods under the first part of paragraph 258, tariff act of 1913, was claimed dutiable as cotton cloth (par. 252) or as "all other Jacquard figured manufactures of cotton" under the last clause in paragraph 258. Protests overruled.

BEFORE BOARD 3, OCTOBER 20, 1914.

No. 36757.—BARLEY.—Protests 726438, etc., of H. G. Anderson & Co. (Buffalo). Opinion by Waite, G. A.

Merchandise classified as barley under paragraph 188, tariff act of 1913, was claimed dutiable at 10 per cent ad valorem, no specific paragraph being mentioned, the contention being that the assessment as barley was wrong for the reason that it will not germinate and does not weigh as much as ordinary barley should weigh. Protest overruled.

No. 36758.—FITTED LEATHER CASES.—Protests 729421, etc, of C. F. Rumpp & Sons (Philadelphia). Opinion by Hay, G. A.

Leather cases containing sewing sets were held dutiable as fitted leather cases, as classified. Protests overruled as to leather cases containing safety pins. Abstract 33671 (T. D. 33763) and United States *v.* Cross (4 Ct. Cust. Appls., 274; T. D. 33489) followed.

No. 36759.—RAGS—OLD GUNNY BAGGING.—Protest 726632 of O. G. Hempstead & Son (Philadelphia). Opinion by Hay, G. A.

Old gunny bagging classified as waste under paragraph 479, tariff act of 1909, was claimed free of duty as rags (par. 660). Protest sustained in part. G. A. 7194 (T. D. 31447) followed.

No. 36760.—LEGALITY OF REAPPRAISEMENT.—Protests 722539–4587, etc., of F. G. Favaloro (New Orleans). Opinion by Hay, G. A.

Protests against the validity of the action of a general appraiser and a board of general appraisers in reappraisement proceedings overruled.

No. 36761.—PROTESTS OVERRULED.—Protests 749773, etc., of Crimmins & Peirce et al. (Boston), and protest 745655 of W. I. Johnson (Ogdensburg). Opinions by Hay, G. A.

Protests unsupported; overruled.

BEFORE BOARD 2, OCTOBER 21, 1914.

No. 36762.—BRONZE CASTINGS.—Protest 732128 of J. W. Masters & Co. (New York). Opinion by Fischer, G. A.

Worm-wheel castings of bronze classified as manufactures of metal under paragraph 167, tariff act of 1913, were claimed free of duty as composition metal, copper chief value (par. 460). Protest overruled, the board holding the latter paragraph covers composition metal itself and not articles composed of it.

TREASURY DEPARTMENT, *October 27, 1914.*

The appended decision of the United States District Court for the Southern District of Florida is published for the information of customs officers and others concerned.

ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 34866.)

Customs duties on salved cargo.

ALBURY *et al. v.* CARGO OF THE *Lugano.*[1]

District Court, Southern District of Florida. November 6, 1913.

1. SALVED CARGO—CUSTOMS DUTIES—PRIORITY.

Where a cargo is salved from a foreign ship the salvors have the prior right to be paid salvage before any duties can be allowed the United States.

2. SAME—DUTIABLE GOODS.

The United States has an equitable claim for duties on all such salved goods as were sold and entered into the consumption of the country. No duties can be collected on such salved goods as were exported.

In Admiralty. Suit by Dunham Albury and others against the cargo salved from the British steamship *Lugano.*

[Decree distributing proceeds.]

Eugene O. Locke, of Jacksonville, Fla., for libelants.
G. Bowne Patterson, of Key West, Fla., for claimants.
Herbert S. Phillips, United States Attorney, of Tampa, Fla.

CALL, *District Judge:* The libel in this case claiming salvage was filed on March 29, 1913, and process issued on that day. The marshal, in pursuance of such process, seized and took into his possession the goods libeled. On April 19, 1913, an amended libel was filed, setting out the names of all the libelants. On May 27, 1913, the master of the steamship, as claimant, filed his answer to the amended libel. On August 22, 1913, the United States filed its intervention, claiming duties on the salved goods to the amount of $95,893.61, and claiming the duties as a first lien on the salved goods and certain expenses amounting to something over $1,800. August 18 to 30 the property was sold under order of court. Upon the pleadings and the testimony taken the cause came on to be heard upon the 5th day of May, 1914.

The goods salved were brought into Key West under three consort ships, and in the sale of the goods the amounts realized from each consortship are shown to be as follows:

First consortship	$64,126.67
Second consortship	14,084.30
Third consortship	2,228.18

The evidence shows that the *Dr. Lykes,* a schooner engaged in the salvage work making two trips with cargo, was short in the delivery of goods to the amount of $934.06 and over in the amount of $137.90. No attempt has been

[1] Reported in 215 Fed., 963.

made in the evidence to account for this discrepancy of receipt and delivery of cargo by the officers, crew, or owner of the *Dr. Lykes*.

The facts as shown by the evidence are as follows:

During the night of March 9, 1913, the British steamship *Lugano*, while on a voyage from Vigo, Spain, to Habana, Cuba, loaded with a general cargo, went ashore on Long Reef, one of the reefs off the coast of Florida. On the morning of March 10, 1913, Dunham Albury, a licensed wrecker, boarded her, and his services and those of his consorts were accepted by the master to save the ship and cargo. The evidence makes it very probable that the ship bilged when she went upon the reef. The salvors worked from March 10 to March 21 in gangs, day and night, hoisting out cargo and loading it upon the several boats, using the ship's steam and machinery, except for two days when the water flooded the boiler room and cut off the steam from the donkey engine, whereupon the salvors procured pumps from Miami and thereby reduced the water in the boiler room so that steam could once more be obtained, and used the ship's power once more in discharging cargo. All the cargo saved was carried to Key West, about 150 miles distant, and stored, except as above noted, by the schooner *Dr. Lykes*. The weather during this period was stormy, and several of the vessels of the salvors were injured. On March 22 the salvors gave up hope of saving the ship, and discontinued their work upon it on account of the heavy weather. During the time between March 22 and April 3 efforts were made by some of the salvors under contract with the owners of the vessel to float her, without avail, for which no claim is made in this case. On April 4 they returned to work saving cargo, and worked until the 15th of that month. The cargo saved in the first consortship was not damaged and injured by water; that saved in the second consortship was about half wet and half dry; that saved in the third consortship was wet, consisting of barrels of wine and glass. In saving the goods salved in the first and second consorts the men were required to stand in water in breaking out the cargo, ranging from a few inches to some feet. In salving the goods saved in the third consortship the men were required to work in the water, diving in many instances to get the goods. This water had become very bad on account of the rice, flour, and caustic soda in the cargo, and the fumes made some of the salvors and members of the crew sick, and the caustic soda in the water inflamed the eyes, bodies, and limbs of the men working in it. It was also necessary for the men to clear the suction of the pump used in keeping the boiler room clear of water by diving and cleaning it with their hands. The ship was listed about 15 degrees as she lay upon the reef. There were engaged in this service some 80 vessels of all kinds, schooners, sloops, and boats, aggregating over 1,000 tons, and nearly 500 men in the first consortship and fewer vessels and men in the second and third.

The questions to be decided by this court are four: First, the priority of the claims of the salvors and the United States; second, the amount of salvage to be allowed the salvors; third, the items of costs to be paid before the allowance of any amount for salvage; fourth, the amount to be allowed for customs duties on sale of the goods that were sold and were consumed in the United States.

The question whether the duties upon the cargo brought into Key West by the salvors should be paid prior to the allowances of salvage was before the District Court for the Eastern District of New York and decided by Judge Benedict adversely to the claims of the Government, as set forth in its intervention in this case, and I have not been cited to any authority holding a contrary view. Judge Benedict fully discusses the questions involved and the authorities bearing upon the questions, and a further discussion of the question by me is unnecessary. Merritt *v.* One Package of Merchandise, etc., and other cases (D. C.) (30 Fed., 195). On the authority of these cases and others bearing upon the question, but

not directly in point, I hold that the salvors have the prior right to be paid salvage before any duties can be allowed the United States.

The next question to be considered is the amount to be allowed the salvors for their services in saving the property. There can be no question but that the service is a salvage service. In fixing the amount of salvage the court will be governed by the consideration of the following elements: (1) Labor expended by salvors in rendering the salvage service; (2) promptitude, skill, and energy displayed in rendering the service and saving the property; (3) the value of the property employed by the salvors in rendering the service and the danger to which such property was exposed; (4) the risk incurred by the salvors in securing the property from the impending peril; (5) the value of the property saved; (6) the degree of danger from which the property was rescued. The *Blackwall* (10 Wall., 14).

The court further says in that opinion:

> Compensation as salvage is not viewed by the admiralty courts merely as pay, on the principle of a *quantum meruit* or as a remuneration *pro opere et labore*, but as a reward given for perilous services, voluntarily rendered, and as an inducement to seamen and others to embark in such undertakings to save life and property.

Authorities could be multiplied on this subject, but it would be of no particular value in this case.

Applying these principles to the case under consideration, and bearing in mind the circumstances under which this cargo was saved, what is a proper amount to allow the salvors? The amount for which the property was sold must be the guide to this court of the value of the salved property. After viewing all the circumstances of this case in the light of the principles announced by the courts in salvage cases, and bearing in mind that salvage should not amount to forfeiture, I am of the opinion that the proper amount of salvage to be allowed in this case, to be calculated and to be distributed according to the rules of this court, is as follows: Thirty per cent on the value of the goods saved by the first consort, 45 per cent on the value of the goods saved by the second consort, and 50 per cent on the value of the goods saved by the third consort.

This brings me to the consideration of the item of cost proper to be charged against the fund before salvage is calculated. Of course, all court costs, costs of storage, care of property, sale, etc., are first deducted. And in addition to these certain other cost bills have been presented, among them the consignee's bill. This last has been paid under order of this court, dated January 22, 1914, but I do not understand this order as settling the question whether or not it should be paid before salvage calculated. I have therefore examined the items of this bill, and while it is entirely proper that it should be paid out of the money in the registry of this court, there are certain items that should be paid from the residue and not from the fund before salvage calculated. These items are represented by vouchers attached to consignee's bill, and are not allowed against the salvage, as follows, to wit, vouchers Nos. 1, 2, 3, 8, 9, 10, 18, 19, 20, 21, 23, 26, 27, 35, 36, 37, 38, 42, 43, 44, 45, 46, 47, 48, 51, 52, and 53.

At the hearing a bill was presented for services rendered by an expert in classifying the salved cargo. In my opinion this bill should be paid from the proceeds in the registry of the court before the salvage is calculated.

There is also a bill of expenses incurred by the United States, presented at the hearing. It appears that the services were rendered while the goods were in the custody of the marshal of this court under attachment issued herein. The sections under which the collector of customs acted are not applicable to goods brought in as these were, and *in custodia legis;* said claim is therefore disallowed.

The only remaining question is, What amount shall be allowed the United States for duties? It is well settled by adjudications that the United States has an equitable claim for duties on all such goods as were sold and entered into the consumption of the country. See cases cited in 30 Fed., p. 195.

In this case evidence has been adduced showing that quite an amount of these goods were exported for which no duties can be allowed. It is the opinion of the court that, after deducting the amount for which the exported goods were sold from the residue, after the payment of costs chargeable against such residue, 30 per cent of the amount left in the registry of the court shall be paid to the United States in satisfaction of its claim for duties. The amount remaining after such payment shall be paid to claimants upon filing claims as their interests appear.

There is one other question that must be decided by the court in this case—that of the shortage of cargo by the schooner *Dr. Lykes*. The evidence leaves no doubt that she was short in her cargo something like $800 after deducting the overages. "Punctilious honesty is required of salvors. Embezzlement, however small in amount, whether at sea, in port, or after the goods are in the custody of the law, works a forfeiture of all salvage," says Judge Marvin in section 220 of his work on "Salvage." In this case there has been no attempt to explain this shortage by the master or crew of the *Dr. Lykes*. The only thing in the testimony is a conversation testified to by a witness with the master of the schooner, in which the master is quoted as saying "He could not help it." It would appear to the court that this case is one of flagrant carelessness, if not worse.

It is therefore ordered that the shares of the master and crew of the schooner *Dr. Lykes* be forfeited to the use and benefit of the owners of the property.

The decree will be entered in accordance with this opinion.

(T. D. 34867.)

Drawback on condensers for steam boilers.

T. D. 33148 of February 3, 1913, extended to cover condensers for steam boilers manufactured by the Alberger Pump & Condenser Co., of New York, N. Y., with the use of imported brass condenser tube heads.

TREASURY DEPARTMENT, *October 27, 1914.*

SIR: The department's regulations of February 3, 1913 (T. D. 33148), providing for the payment of drawback on condensers for steam boilers manufactured by the Alberger Pump & Condenser Co., of New York, N. Y., with the use of imported brass tubing, are hereby extended to cover condensers for steam boilers manufactured by the said company with the use of imported brass condenser tube heads.

A manufacturing record shall be kept, which will show, in addition to the usual import data, the lot number and date of manufacture of each condenser manufactured for exportation with benefit of drawback, the dimensions, weight, and value of the imported brass condenser tube heads used in the condition in which imported, the

dimensions and weight of the same as appearing in the completed condenser, the quantity of waste incurred, and the value of such waste at the time and place of manufacture. A sworn abstract from such manufacturing record shall be filed with each drawback entry.

The allowance shall not exceed, for each condenser exported, two imported brass condenser tube heads of the dimensions, weight, and value of those used in the manufacture thereof, as shown by the sworn abstract from the manufacturing record, the allowance to be reduced according to the value of the waste.

Respectfully, BYRON R. NEWTON,
(102445.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34868.)

Outward cargoes.

No information in regard thereto to be given out until 30 days after clearance.

TREASURY DEPARTMENT, *October 28, 1914.*

To collectors and other officers of the customs:

Until further directed you will refrain from making public, or giving out to any other than duly authorized officers of the Government, information regarding any and all outward cargoes and the destination thereof until 30 days after the date of the clearance of the vessel or vessels carrying such cargoes.

(102574.) WM. P. MALBURN, *Assistant Secretary.*

(T. D. 34869.)

Invoices.

T. D. 34779 of September 26, 1914, relating to the rejection of invoices, modified.

TREASURY DEPARTMENT, *October 27, 1914.*

SIR: Your attention is invited to the department's letter of September 26, 1914 (T. D. 34779), in which you were instructed to reject invoices not made out in accordance with the consular regulations as promulgated in T. D. 34542 when certified after October 31, 1914.

The said instructions are hereby amended to read "when certified after November 30, 1914."

Respectfully, BYRON R. NEWTON,
(97338.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34870—G. A. 7625.)

Fancy metal pencils.

Fancy metal pencils valued above 20 cents per dozen pieces, intended to be carried in the pocket, are within paragraph 356 of the tariff act of 1913 providing for metal articles of that value designed to be "carried on or about or attached to the person," and are not dutiable under paragraph 167, providing for articles in chief value of metal not specially provided for.

A paragraph of a tariff act providing for articles composed of a specified material not otherwise provided for covers an article or fabric having such material as the component of chief value.

United States General Appraisers, New York, October 31,1914.

In the matter of protests 741276, etc., of Hensel, Bruckmann & Lorbacher *et al.* against the assessment of duty by the collectors of customs at the ports of New York and Chicago.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers).

Sullivan, *General Appraiser:* The merchandise in each of these protests consists of metal pencils, assessed at 60 per cent ad valorem under paragraph 356 of the tariff act of 1913 as being designed to be worn on apparel or carried on or about or attached to the person. It is contended that it should be assessed at 20 per cent under paragraph 167.

An examination of the merchandise discloses that it consists of pencil holders in chief value of metal, known as "Prorepel" pencils, meaning that the lead moves in and out, the object being not to damage or soil the clothing by the extension of the lead. In some instances a portion of the pencil is composed of gallilith; in many they are entirely of metal. On one of the exhibits is attached a clip for more securely fastening the pencil to the pocket. On all metal is the material of chief value and all valued at more than 20 cents per dozen pieces.

In protest 741276 it is earnestly contended by the protestants that paragraph 356 does not apply to these articles (1) for the reason the words "composed of metal" in paragraph 356 mean composed wholly of metal, and not in chief value of metal; (2) for the reason paragraph 356 covers only articles designed to be carried on or about the person; that the merchandise in question is not of that character, nor so designed, but is an article of utility, namely, a lead pencil; (3) for the reason the merchandise is more particularly within the provision of paragraph 167 relating to " articles or wares not specially provided for in this section; * * * if composed wholly or in chief value of iron, steel, lead, copper, brass, nickel, pewter, zinc, aluminum, or other metal, * * * 20 per centum ad valorem."

Paragraph 448 of the act of 1909 had reference principally to jewelry. After numerous decisions by the board in which the classification was not at all times satisfactory, the Court of Customs

Appeals in Cohn *v.* United States (4 Ct. Cust. Appls., 378; T. D. 33536) and United States *v.* Guthman (3 Ct. Cust. Appls., 276; T. D. 32572) finally and fully construed this paragraph with reference to jewelry and articles of similar character. It was there held that everything commonly or commercially known as jewelry should be classified at 60 per cent ad valorem under the last clause of that paragraph. This construction was had prior to the enactment of the tariff act of 1913.

It evidently was the intent of Congress in the act of 1913 to simplify and make more clear and precise the merchandise to be included within the provisions of the so-called jewelry paragraph.

The history of this paragraph is interesting, not only by studying the holdings of the board and the courts, but ascertaining what Congress ultimately intended by the enactment of the present paragraph Bearing in mind the construction placed on paragraph 448 by the Board of General Appraisers and the Court of Customs Appeals as to what was and was not included within its terms and what was and what not eliminated we have a starting point for the formation of the jewelry paragraph of the act of 1913. It was held by the board and by the court that the following articles were not within the jewelry provision of the act of 1909: Chains, purses of imitation and precious metal, chain purses of silver, children's finger rings, combs of celluloid and jet, combs of flimsy metal ornamentation, gun-metal pencils and purses, metal coin holders, coin portemonnaies, frames for miniatures set with precious stones, necklaces valued at less than 11 marks per gross, umbrella handles set with imitation precious stones, watch charms, miniature opera glasses, watch guards of leather and polished steel. The following articles were held dutiable as parts of jewelry: Chatelaines drilled for setting, clasps and slides for necklaces, parts of watch fobs of nickel, swivels and hooks of white metal.

With these holdings of the board and of the courts before it, Congress took up the subject of jewelry and passed paragraph 356 of the tariff act of 1913. In doing so it enumerated a class of articles at a certain rate of duty that may or may not have been jewelry, but it specifically prescribed the rate to be applied. Congress said that jewelry commonly or commercially known as such was dutiable at 60 per cent ad valorem. Here is a clear and succinct designation, intended evidently to cover merchandise which the board and the courts had held to be such within the provisions of paragraph 448 of the act of 1909. It then provided that—

> * * * Rope, curb, cable, and fancy patterns of chains not exceeding one-half inch in diameter, width, or thickness, valued above 30 cents per yard; * * *

should be dutiable at the rate of 60 per cent ad valorem. It probably would not be held that rope, curb, cable, and fancy patterns of

chain as herein described would be commonly or commercially known as jewelry, yet Congress, having the power, declared such merchandise dutiable at 60 per cent ad valorem and placed it in the same paragraph with merchandise commonly or commercially so known. It further declared that "articles valued above 20 cents per dozen pieces designed to be worn on apparel or carried on or about or attached to the person, such as and including buckles, card cases, chains, cigar cases, cigar cutters, cigar holders, cigarette cases, cigarette holders, coin holders, collar, cuff, and dress buttons, combs, match boxes, mesh bags and purses, millinery, military, and hair ornaments, pins, powder cases, stamp cases, vanity cases, and *like articles*" composed of metal should be dutiable at 60 per cent ad valorem. It may be that the articles designated herein would not be commonly or commercially known as jewelry; be that as it may, Congress declared that such articles should pay a duty of 60 per cent ad valorem whether commonly or commercially known as jewelry, and that *all like articles* should pay the same rate. We therefore have presented the question whether pencil holders composed entirely of metal, purely ornamental, having for their purpose the retention of lead and used as a pencil, should pay duty as a manufacture wholly or in chief value of metal under paragraph 167 or as an article "valued above 20 cents per dozen pieces designed to be worn on apparel or carried on or about or attached to the person" under paragraph 356 of the act of 1913.

It may be observed that the merchandise is composed entirely of metal in many instances, in others containing other material, but metal in each instance being the component material of chief value; that it is used as an ordinary lead pencil; and being carried in the pocket or attached thereto by a clip, it is carried on or about or attached to the person. It is insisted that, not being specifically described in paragraph 356, and the component material of chief value being metal, it is more properly classifiable under paragraph 167, for the reason that this paragraph refers to articles composed *in chief value* of metal, while paragraph 356 refers to merchandise "composed of metal," which should be construed to mean "composed *wholly* of metal," except where enameled or set with stones.

It has generally been the ruling of the courts and this board that where a paragraph of a tariff act provides for a manufacture of a certain material, an article or fabric having such material as its component of chief value is included within that paragraph.

In the matter of protests of Alms & Doepke Co. (G. A. 4532; T. D. 21542) it was held by the board that certain towels returned by the appraiser as woven articles of flax and cotton under paragraph 322 of the tariff act of 1897 were properly dutiable under that paragraph; that this paragraph included all manufactures of which cotton

was chief value and was not confined to a manufacture wholly of cotton. In that case the board stated:

If the component of chief value in this merchandise is cotton, as is claimed by the importers here, it must be considered a manufacture of cotton, and thus falls within the provisions of paragraph 322. The authorities have generally held that where the language of a paragraph provides for a manufacture of a certain kind, as, for instance, cotton, an article or fabric made out of such material in chief is included.

In Arthur's Executors *v.* Butterfield (125 U. S., 70), the Supreme Court of the United States, speaking through Justice Field, held that goat's hair goods, composed in chief value of goat's hair and having 20 per cent of cotton in their composition, used chiefly for women's dresses, were subject to the duty imposed by the act of July 14, 1870, upon "manufactures of hair not otherwise herein provided for," and not to the duty imposed by the act of March 2, 1867, upon "women's and children's dress goods and real or imitation Italian cloths, composed wholly or in part of wool, worsted, the hair of the alpaca, goat, or other like animals." The court thus enunciated the principle that an article may be designated as a manufacture of a certain material if that material predominates in its composition, although in fact it may contain other material than that of chief value. Justice Field stated:

The fact that 20 per cent of cotton entered into the composition of the goods and only 80 per cent of them are of hair does not change their character as manufactures of hair within the meaning of the act of 1870. Crinoline and hair seating, both of which are in that act specifically designated as hair cloth, have also cotton in their composition. The designation of a cloth as hair, silk, or cotton depends on the predominance of such article in its composition and not upon absence of any other material.

In Thomsen *v.* United States (2 Ct. Cust. Appls., 37; T. D. 31590) the court held in reference to baskets described in paragraph 214 of the act of 1909 that—

The term "baskets" being the name of the articles, seems clearly to be a more exact and specific designation of them than the term "manufactures." This latter term in this application is one of general description only. The fact that the component material is more specifically described in the second paragraph does not conflict with this conclusion, for nevertheless the term "baskets" is the exact and specific name of the article itself.

That holding was approved in United States *v.* Zinn (2 Ct. Cust. Appls., 419; T. D. 32171), also in United States *v.* Mulhens & Kropff (4 Ct. Cust. Appls., 496; T. D. 33917).

We need not cite additional authorities to sustain the conclusion that the provision in the statute for articles composed of metal includes all articles in which metal is the component material of chief value.

It is further contended that the merchandise is not designed for nor of a nature to be worn upon the person, and a distinction is

drawn in protests 732353–9 of Rosenfield & Goodman, wherein it is stated in the brief of counsel for the protestants:

> It therefore appears that these pencils are designed for two things, one a *use* and the other a *purpose*, neither one of which is enumerated in the law. That pencils are very often carried in the pocket can not be denied, but that they are designed to be worn upon the person is not necessarily true.

Counsel further stated in said brief:

> The person being understood to mean the actual body and not the clothing or apparel, as the law itself differentiates between the person and the apparel, and does not provide for articles to be worn *in* the apparel.

This may be a distinction, but we are not quite able to follow it. All articles referred to in the statute whose classification is not doubted are worn in or on the apparel and all are carried on or about or attached to the person. We can not differentiate the apparel from the person and give a proper classification to the merchandise. It is worn in or on the apparel and certainly on or about the person. The pencils are carried in the pocket, it is true, not about the neck. They are ornamental to the desired extent, but in any event they are worn or carried on or about the person, and thus come within that description in the paragraph.

It is insisted that these pencils are not "*like articles*" named in the paragraph. There are many articles named in the paragraph that might be within this contention of counsel, and yet Congress has said that they are thus dutiable, and has classified all like articles at the same rate. There may not be much connection between cigar holders and combs, between dress buttons and match boxes, mesh bags and card cases, yet all metal articles that are carried on or about the person are dutiable at the same rate as they are, and are alike in that respect at least. The phrase "like articles" in this paragraph refers to merchandise valued above 20 cents per dozen pieces designed to be worn on apparel or carried on or about or attached to the person and composed of metal. This merchandise is valued at more than 20 cents a dozen, is made of metal, and certainly is to be carried on or about or attached to the person. Then Congress, after giving a general description of merchandise thus to be classified, specifically referred to certain articles and added "and like articles." Is there any greater difference between the merchandise in dispute and the articles named than there is between cigarette cases and dress buttons? It follows that these pencils are within the meaning of the words "and like articles," and are intended by Congress to be so classified. We can not come to any other conclusion.

From the facts in this case, the history of the paragraph, the act of of Congress in thus classifying like merchandise, and in the light of the holdings of the courts with reference to paragraph 448 of the act

of 1909, this merchandise can not in our opinion be classified under any other paragraph than 356. It is valued above 20 cents per dozen pieces; it is designed to be worn on apparel or carried on or about or attached to the person; it is a like article to those referred to in this statute; and it is composed either wholly or in chief value of metal. It was therefore properly classified by the collector.

The protests are overruled and the action of the collector affirmed in each case.

(T. D. 34871.)

Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*.—Waite, Somerville, and Hay.

BEFORE BOARD 1, OCTOBER 23, 1914.

No. 36763.—BLEACHING SODA—CHEMICAL COMPOUND.—Protest 731358 of R. H. Comey Co. (New York).

BROWN, *General Appraiser:* The appraiser states in his report that—

The merchandise described on the invoice as bleaching soda, and claimed to be pyrophosphate of soda, consists of an impure sodium of pyrophosphate, used for bleaching purposes, and is not the phosphate of soda of commerce.

It was classified under paragraph 5, act of 1913, reading:

5. Alkalies, alkaloids, and all chemical and medicinal compounds, preparations, mixtures and salts, and combinations thereof not specially provided for in this section, 15 per centum ad valorem.

It is claimed to be dutiable at one-fourth cent per pound under paragraph 67, directly, or by similitude under paragraph 386.

Paragraph 67 is an *eo nomine* enumeration of various compounds of soda at specific rates, and includes phosphate of, hyposulphite of, sulphid of, and sulphite of soda. This careful enumeration nowhere includes pyrophosphate of soda.

The importer introduced no evidence at the trial except a chemical analysis (headed "Analysis of pyrophosphate of soda"), the admission of which was objected to by the Government, and which, under the rules of evidence, can not be considered.

The Government chemist testified that pyrophosphate and phosphate of soda are different chemical substances and will give different chemical reactions.

Therefore, in the absence of evidence of commercial definition, on this record the rticle in question can not be classified as phosphate of soda.

Protest overruled.

No. 36764.—PROTESTS ABANDONED.—Protests 737038, etc., of Park & Tilford et al. (New York).

Protests abandoned.

BEFORE BOARD 1, OCTOBER 27, 1914.

No. 36765.—NOVELTY SIDING—BEADED LUMBER.—Protests 732915, etc., of F. W. Myers & Co. et al. (Ogdensburg et al.).

McCLELLAND, *General Appraiser:* The issue in these cases was originally decided July 7, 1914 (Abstract 36067; T. D. 34629). Thereafter and on September 2, 1914, a rehearing was granted on motion of the Government. On September 9 following the case was again submitted upon the original record, and we now see no reason to change our former decision, which is hereby affirmed and promulgated anew, as follows:

The merchandise which is the subject of these protests was returned by the appraiser as manufactures of wood and assessed with duty at the rate of 15 per cent ad valorem under paragraph 176 of the tariff act of 1913. It is claimed to be free of duty under paragraph 647 of the same act.

Considerable of the lumber involved is similar in all respects to the novelty siding that was the subject of G. A. 7546 (T. D. 34305), which the board held to be entitled to free entry, and from that decision no appeal was taken by the Government. It follows then as to all such novelty siding as is involved here that the action of the collector must be reversed.

The question as to the other lumber involved is practically the same as that which was raised in the novelty-siding case, except that the Government contends that this lumber, being beaded, is advanced beyond the condition of the novelty siding, and therefore should be held to be manufactures of lumber.

The evidence establishes very clearly that the beading effect is produced by a planer and matcher, similar to that used in producing novelty siding, it being but a question of how many blades are used in the planer. In G. A. 7546, *supra*, we said:

"The witnesses, who appear to be men of extended experience in the milling and lumber trade, practically unite in saying that planed lumber, as known to the trade, embraces all forms of lumber that are made through the use of a planer or planer and matcher. Very clearly it would seem as though paragraph 176, *supra*, was not framed to include such lumber, for the very obvious reason that it has not lost its identity as lumber by being manufactured into an article with a distinct and new name. The most that may be said here is that these boards are lumber manufactured, which is altogether different from being manufactures of lumber. In United States *v.* Dudley (174 U. S., 670) it was held that boards and planks, planed on one side and tongued and grooved and adapted for flooring, ceiling, and sheathing, were, nevertheless, not manufactures of wood."

The claims for free entry of this beaded lumber must be sustained, and the action of the collector is reversed in each case.

No. 36766.—ORANGE OIL.—Protest 733375 of A. Giese & Son (New York). Opinion by McClelland, G. A.

Orange oil classified as a chemical compound under paragraph 17, tariff act of 1913, was held dutiable under the specific provision therefor in paragraph 46.

No. 36767.—SHAVING AND TOILET SOAPS.—Protests 738007, etc., of A. D. Thompson Drug Co. et al. (Minneapolis). Opinion by McClelland, G. A.

Shaving and toilet soaps classified as perfumed were claimed dutiable as unperfumed soaps under paragraph 66, tariff act of 1913. Protests sustained in part.

No. 36768.—MATCHES.—Protest 741680 of Strohmeyer & Arpe Co. (New York). Opinion by McClelland, G. A.

Friction matches with stained sticks were held properly classified at 25 per cent ad valorem under paragraph 345, tariff act of 1913.

No. 36769.—PIGMENT CONTAINING ZINC.—Protest 752210 of A. Klipstein & Co. (New York). Opinion by McClelland, G. A.

Zinc yellow, crushed, found to consist of a pigment containing zinc, was held dutiable under the first provision of paragraph 61, tariff act of 1913, as claimed.

No. 36770.—PROTESTS OVERRULED.—Protest 758302 of Japan Import & Export Commission Co. (New York), protests 716638, etc., of H. Bayersdorfer & Co., and protest 752144 of O. G. Hempstead & Son (Philadelphia). Opinions by McClelland, G. A.

Protests unsupported; overruled.

No. 36771.—METAL PERFUME FLASKS.—Protest 732352-45869 of Rosenfield & Goodman (Chicago).

SULLIVAN, *General Appraiser:* The merchandise in question is described by the appraiser in his answer to the protest as follows:

The merchandise in question consists of perfume flasks composed of glass and metal, metal being by far the component material of chief value. They are in tube shape, about 3½ inches long (full length) and about $\frac{5}{16}$ inch in diameter, being in shape, size, and general make-up designed apparently to be carried in the pocket or about the person. They are fancy in finish and design, being gilded and the top part being fluted, and the automatic stopper being of an ornamental pattern.

Although the stopper does not appear to be automatic, an examination of the official sample shows the appraiser's description of the article to be fairly accurate.

The appraiser goes on to state:

The value being over 20 cents per dozen pieces return for duty was made at the rate of 60 per cent ad valorem under paragraph 356, N.T., which provides for "articles valued above 20 cents per dozen pieces, designed to be worn on apparel or carried on or about or attached to the person, such as * * * card cases, powder cases, * * * vanity cases, and like articles * * * composed of metal."

The claim relied upon by the protestants appears to be that duty should have been assessed on this article under paragraph 167, tariff act 1913, as manufactures of metal at 20 per cent ad valorem.

The testimony of protestants' only witness as to this article, so far as applicable, is as follows:

Q. What is the purpose of this article? Briefly describe what the article is.—A. It is a perfume flask made of metal and containing a vial made of glass with a cork and sprayer top, and it is used by ladies or girls; filled with perfume and *carried in the pocketbook or handbag.* (The italics are ours.)

We therefore have the uncontradicted statement of the appraiser that it is valued over 20 cents per dozen pieces, and that it is composed in chief value of metal. This statement, coupled with the witness' testimony that "it is used by ladies or girls * * * and carried in the pocketbook or handbag" (showing that it is designed to be "carried on or about or attached to the person"), leads us to hold that the merchandise was properly classified by the collector.

The protest is overruled.

No. 36772.—WOOL CAMEL—TOYS.—Protest 719696 of Margarete Steiff & Co. (Norfolk).

BROWN, *General Appraiser.* The special deputy collector, in his letter to the board, says that the merchandise in question was returned by the appraiser as a "camel composed in part of wool, for advertising purposes."

It was classified under paragraph 378, act of 1909, at 33 cents per pound and 50 per cent ad valorem as a manufacture in part of wool not specially provided for.

It is claimed to be dutiable as a toy under paragraph 431 at 35 per cent.

At the trial, the item in question, with the accompanying picture from the catalogue of Margarete Steiff & Co., the manufacturers, was introduced in evidence. The examiner, by looking at the item on the invoice (13160/2/8), identified the merchandise as being the same camel as shown in the catalogue and stated that "this camel entered at Newport News is the same—identical in every way with those that

are entered as toys at the port of New York except that the latter contain no advertising."

The question attempted to be raised is whether the importation of this camel for use primarily as a toy advertisement takes it out of the toy paragraph and puts it under that for wool. But such issue does not seem to have been raised in fact.

Upon this very incomplete and unsatisfactory record, taking the appraiser's report as true that it is imported for advertising purposes, there is no evidence in the record to negative that statement. For all that appears it might be forever used as an advertisement and never as a toy. It was incumbent upon the importer to show at least that it was only to be used in the form imported as an advertisement temporarily and subsequently sold or used as a toy with the advertisement matter taken off; and this he has not done. The admission of the catalogue, showing a similar camel without any advertisement on it, and the statement of the examiner in New York that if thus imported without advertising matter it would be returned by him as a toy, does not raise that issue in the absence of evidence that the camel here was ever to be used as a toy rather than as the advertisement for which it was imported.

Therefore, on this record, there are no facts appearing which tend to overturn the presumption attached to the action of the classifying officer, and the protest must be overruled.

CONCURRING OPINION.

McClelland, *General Appraiser:* I concur in the conclusion reached in this case by my associate, General Appraiser Brown. The mere fact that the article involved was imported for advertising purposes precludes the possibility of its being legally classed as a toy.

No. 36773.—Mineral Wax—Chemical Mixture.—Protest 725810 of C. H. Langley (Boston). Opinion by Brown, G. A.

Hard white wax classified as a chemical mixture under paragraph 3, tariff act of 1909, was held free of duty as mineral wax (par. 707). Abstract 21425 (T. D. 29834) and United States *v.* Morningstar (168 Fed., 541; T. D. 29651) followed. Abstract 36042 (T. D. 34609) and Abstract 36208 (T. D. 34677) cited.

No. 36774.—Pilchards—Herrings.—Protest 728102 of L. S. Jolles (Boston). Opinion by Brown, G. A.

Pilchards, smoked and packed in casks, classified under paragraph 273, tariff act of 1909, were held dutiable as herrings, smoked (par. 272). United States *v.* Miller (5 Ct. Cust. Appls., —; T. D. 34443) followed.

No. 36775.—Fish in Tins.—Protest 751683 of Cresca Co. and protests 714815, etc., of Tokstad-Burger Co. et al. (New York et al.). Opinions by Brown, G. A.

Merchandise classified as fish in tins under paragraph 270, tariff act of 1909, was held dutiable as herrings, pickled or salted, smoked or kippered (par. 272). Protests sustained in part.

No. 36776.—Protests Overruled.—Protest 722333 of Samuel Bloom & Sons Co. (Los Angeles). Opinion by Brown, G. A.

Protests unsupported; overruled.

Before Board 2, October 27, 1914.

No. 36777.—Lithographic Prints—Seals.—Protests 705778, etc., of Birn Bros. (New York). Opinion by Fischer, G. A.

So-called wafers classified as labels, lithographically printed, under paragraph 412, tariff act of 1909, found to be of the same general character as initial and Christmas seals

designed for use as seals for envelopes or packages, not capable of performing the function of labels, and so-called "hand relief scraps," were held dutiable as lithographic prints under the same paragraph. G. A. 7531 (T. D. 34164) and Abstract 35413 (T. D. 34416) followed. Protests sustained in part.

No. 36778.—STEEL STAMPINGS.—Protests 728739, etc., of A. & H. Veith (New York). Opinion by Fischer, G. A.

On the authority of Abstract 30908 (T. D. 33055), steel stampings classified as manufactures of metal under paragraph 199, tariff act of 1909, were held dutiable under paragraph 131 as claimed.

No. 36779.—METAL THREAD GOODS.—Protest 733515 of W. H. Horstmann & Co. (Philadelphia). Opinion by Fischer, G. A.

The merchandise in question was held dutiable as bullions and metal threads made wholly or in chief value of tinsel wire, rather than articles of tinsel wire as classified nnder paragraph 179, tariff act of 1909.

No. 36780.—EMBROIDERY COTTON.—Protest 733850 of Wm. H. Horstmann & Co. (Philadelphia). Opinion by Fischer, G. A.

Embroidery cotton in skeins, classified under paragraph 179, tariff act of 1909, was held dutiable under paragraph 314, as claimed.

No. 36781.—SPROCKET CHAINS.—Protests 755832, etc., of H. F. L. Funke Co. (New York). Opinion by Fischer, G. A.

Sprocket chains classified as parts of automobile under paragraph 119, tariff act of 1913, were held dutiable under the specific provision therefor in paragraph 126.

No. 36782.—PROTESTS OVERRULED.—Protest 752125 of Stone & Downer Co. (Boston), protest 747872 of Belknap Hardware & Manufacturing Co. (Louisville), protests 748766, etc., of the Albertype Co. et al. (New York), protest 753871 of the Nacozari Railroad Co. (Nogales), protests 750908, etc., of W. F. Lorimer et al. (Norfolk), protests 748245, etc., of F. W. Lutz & Co. (Richmond), and protest 726655 of Hernand Behn (San Juan). Opinions by Fischer, G. A.

Protests unsupported; overruled.

No. 36783.—RAIN COATS, COTTON CHIEF VALUE.—Protests 704180, etc., of M. L. Rothschild & Co. (Minneapolis and St. Paul). Opinion by Cooper, G. A.

Rain coats classified as wearing apparel in chief value of cotton under paragraph 324, tariff act of 1909, were claimed dutiable as rubber chief value (par. 463). The evidence showed that while the rubber predominated in weight, the cotton was of more value than the rubber. Protests overruled.

No. 36784.—VELVET, COTTON CHIEF VALUE—CLOTH.—Protests 720282, etc., of Wm. H. Stiner & Son et al. (New York).

Velvet, the pile of which is composed of cotton and the back of silk, classified as cotton cloth under paragraph 321, tariff act of 1909, was claimed dutiable as velvet composed of cotton (par. 325). Protests sustained.

COOPER, *General Appraiser:* Velvet, the pile of which is composed of cotton and and back of silk, cotton being the component material of chief value, was classified under paragraph 321, act of 1909, as "cloth, composed of cotton or other vegetable fiber and silk," and duty was taken at the rate of 50 per cent ad valorem, the minimum rate under said paragraph. The importers rely upon the claim that the merchandise is dutiable at 47½ per cent ad valorem under paragraph 325, as "plushes, velvets, * * * composed of cotton or other vegetable fiber, except flax * * *."

The testimony shows that the merchandise is velvet composed of silk and cotton and that cotton is the component of chief value. The merchandise was classified as "cloth," but we do not think it meets the requisites of cloth as that term is defined in paragraph 320. It is the opinion of the board that the threads in velvet can not be counted by unraveling or other practical means, and the collector's classification of the merchandise as "cloth" is therefore erroneous. But, aside from that consideration, the provision "velvets, composed of cotton or other vegetable fiber," is more specific than "cloth, composed of cotton or other vegetable fiber and silk, of which cotton or other vegetable fiber is the component material of chief value." The words "composed of" have been held to mean "composed wholly or in chief value of" (Kenyon *v.* United States, 4 Ct. Cust. Appls., 344; T. D. 33529), and this merchandise is velvet composed in chief value of cotton. The same question was passed upon by this board in Abstract 35819 (T. D. 34548), and, following our ruling in that decision, we hold the merchandise in question dutiable at 47½ per cent ad valorem under paragraph 325.

No. 36785.—Crochet Buttons—Weight of Labels—Embroidered Leather Gloves.—Protests 729547, etc., of Strawbridge & Clothier et al. (Philadelphia). Opinion by Cooper, G. A.

Merchandise classified as ornaments of crocheted cotton lace under paragraph 349, tariff act of 1909, was held dutiable as buttons (par. 427), as claimed. Abstract 34206 (T. D. 33963) followed. Protest sustained as to weight of cotton labels. On the authority of United States *v.* Wertheimer (4 Ct. Cust. Appls., 338; T. D. 33528), certain embroidered leather gloves were held not to be subject to the additional duty under paragraph 459.

No. 36786.—Flax Articles.—Protests 734929, etc., of M. Gardner & Co. (New York). Opinion by Cooper, G. A.

Table covers composed of flax, classified under paragraph 358, tariff act of 1913, were held dutiable as manufactures of flax (par. 284).

No. 36787.—Cotton Cloth—Size of Yarn.—Protest 735304 of O. G. Hempstead & Son, and protest 745720 of F. B. Vandegrift & Co. (Philadelphia). Opinions by Cooper, G. A.

Protests sustained as to size of yarn in cotton cloth classified under paragraph 252, tariff act of 1913.

No. 36788.—Quilts Woven on Jacquard Looms.—Protest 737049 of Sherman & Sons Co. (New York). Opinion by Cooper, G. A.

Figured quilts composed wholly or in chief value of cotton, classified as Jacquard figured manufactures of cotton under paragraph 258, tariff act of 1913, were held dutiable as quilts made of cotton (par. 264). G. A. 7609 (T. D. 34819) followed.

No. 36789.—Protests Overruled.—Protests 746949, etc. of the Stone & Downer Co. et al. (Boston and New York), and protest 754432 of Hanks & Montgomery (New York). Opinions by Cooper, G. A.

Protests unsupported; overruled.

Before Board 3, October 27, 1914.

No. 36790.—Dried Nori in Sheets—Prepared Vegetables.—Protests 708723, etc., of M. Kawahara et al. (Honolulu).

Waite, *General Appraiser:* The merchandise in question is shown by the samples in the records to be flat sheets of dried seaweed, of a purple color, such as is known as nori. The appraiser states that this seaweed, after having been molded, pressed, and dried, has been dipped in shoyu and redried. It was considered by the appraiser to be dutiable as a prepared vegetable under paragraph 252, tariff act of 1909, and it

was so returned. The importers claim it should be dutiable as a manufactured seaweed under paragraph 78, or free of duty as a crude seaweed under paragraph 630, with additional claims under paragraph 480.

No testimony has been given. We are left to base our decision upon the report of the collector and an inspection of the sample. The board and the court have had under consideration this same vegetable substance, known by the same name, and have held it to be free of duty under paragraph 617, tariff act of 1897, providing for seaweeds and vegetable substances, crude or unmanufactured. See United States *v.* Furuya (176 Fed., 480; T. D. 30316). It was there held that nori, or seaweed gathered from the ocean and sun dried, without the addition of any other substance, and without being subjected to any process other than to spread it on mats to facilitate drying by the sun, was free of duty. Referring to the collector's report, however, it will be seen that considerably more has been done to this commodity than to that under consideration in the court case, to wit, it has been dipped in shoyu and redried after having been molded, pressed, and dried. If the importers could have shown that this was the same commodity as that previously treated, they should have done so. Failing to do so, we see no course open to the board except to sustain the collector's finding. We therefore do so and overrule the protests.

No. 36791.—VALUE.—Protests 731324, etc., of J. W. Coulston & Co. (New York. Opinion by Waite, G. A.

Protests raising questions of value dismissed.

No. 36792.—MANUFACTURES OF MARBLE.—Protest 722112 of A. Murphy & Co. (Philadelphia). Opinion by Waite, G. A.

A marble fountain classified under paragraph 112, tariff act of 1909, was claimed dutiable as sculptures (par. 470). Protest overruled.

No. 36793.—PROTESTS OVERRULED.—Protest 731382 of Tice & Lynch and protest 731685 of C. B. Richard & Co. (New York). Opinions by Waite, G. A.

Protests unsupported; overruled.

No. 36794.—PROTESTS DISMISSED.—Protests 738178, etc., of Becker, Smith & Page et al. (Philadelphia). Opinion by Waite, G. A.

Protests dismissed upon stipulation of counsel.

No. 36795.—SHOOKS—AMERICAN GOODS RETURNED.—Protests 729925, etc., of the A. Courtin Co. (New York). Opinion by Somerville, G. A.

Boxes containing lemons, oranges, grapefruit, etc., classified under paragraph 211, tariff act of 1909, were claimed dutiable at the half rate provided in said paragraph, or free of duty as American shooks returned (par. 500). Protests overruled, the regulations not having been complied with. G. A. 6972 (T. D. 30312) followed.

BEFORE BOARD 1, OCTOBER 30, 1914.

No. 36796.—FURS, DRESSED.—Protest 743380 of Skaperdas & Co. (Ogdensburg). Opinion by McClelland, G. A.

Merchandise classified as furs dressed on the skin under paragraph 348, tariff act of 1913, was claimed dutiable as waste (par. 384). Protest overruled.

No. 36797.—GOATSKINS.—Protests 739355, etc., of Jacob Stein & Sons et al. (New York). Opinion by McClelland, G. A.

Goatskins or moufflons were held dutiable under the second provision of paragraph 348, tariff act of 1913, on the authority of G. A. 7569 (T. D. 34493). Protests sustained in part.

No. 36798.—GLASS, COLORED—OPTICAL GLASS.—Protests 687823, etc., of F. W. King Optical Co. et al. (Cleveland).

SULLIVAN, *General Appraiser:* The merchandise is glass, colored dark blue, ordinarily imported in sizes about 3 by 4 feet and about one-eighth of an inch thick. As shown by the testimony it has probably been polished to show the color; and certainly the sample in evidence has a polished appearance.

This merchandise was classified for duty as cylinder glass, colored, under paragraphs 99 and 104 of the tariff act of 1909, and is claimed to be rough or unwrought optical glass free of duty under paragraph 577 of the same act.

Paragraph 577 provides for exemption from duty of—

Glass plates or disks, rough-cut or unwrought, for use in the manufacture of optical instruments, spectacles, and eyeglasses, and *suitable only for such use* (the italics are ours): *Provided, however,* That such disks exceeding 8 inches in diameter may be polished sufficiently to enable the character of the glass to be determined.

This glass has no refractory or magnifying power, but has every appearance to the eye of ordinary colored glass. The testimony of one of the importers' witnesses is that this glass is made into spectacles to protect the eyes of workmen from the glare of furnaces and *occasionally in art-glass work;* but that the chief use is as stated, which the witness calls an optical purpose. The other witness testifies:

Our experience has been that this glass, which is known as pot blue glass, is used practically entirely for optical purposes, what furnace people call peephole glasses for looking into their furnaces, *and a small amount is used for moving-picture slides.*

He further testifies that he thinks they set the glass in front of the furnace, fastened or set in some frame practically like a window glass, and that it is "used entirely to look through as you would if you had spectacles instead of the frame."

It will be noted that paragraph 577 of the free list exempts from duty glass plates or disks, rough-cut or unwrought, *suitable only for use in the manufacture of optical instruments, spectacles, and eyeglasses,* and that the testimony shows the glass in question is used for other purposes, viz, occasionally in art-glass work, for moving-picture slides, and set in a frame in front of a furnace practically like a window glass. This does not make it an optical instrument, nor the glass suitable only for use in the manufacture of optical instruments, spectacles, and eyeglasses.

It seems to us that this glass was properly classified by the collector. His action is affirmed and the protests are overruled.

No. 36799.—JEWELRY.—Protest 526743 of the Tajimi Co. (New York). Opinion by Sullivan, G. A.

Cohn *v.* United States (4 Ct. Cust. Appls., 378; T. D. 33536) followed as to merchandise commonly known as jewelry.

No. 36800.—HATPINS—JEWELRY.—Protest 360335 of the Ely & Walker Dry Goods Co. (St. Louis). Opinion by Sullivan, G. A.

Hatpins classified as jewelry under paragraph 434, tariff act of 1897, were claimed dutiable as manufactures of metal (par. 193) or as manufactures of glass or paste (par. 112). Protest overruled.

No. 36801.—PYROXYLIN BRACELETS.—Protests 691239, etc., of C. H. Eden Co. et al. (New York). Opinion by Sullivan, G. A.

Bracelets classified as manufactures of pyroxylin under paragraph 17, tariff act of 1909, upon stipulation of counsel were held dutiable as jewelry (par. 448). United States *v.* Kraemer (5 Ct. Cust. Appls., —; T. D. 34474) cited.

No. 36802.—SALVATION ARMY BADGES.—Protests 512367, etc., of Thomas & Pierson (New York). Opinion by Sullivan, G. A.

Salvation Army badges classified under paragraph 448, tariff act of 1909, stipulated by counsel to be of the same dutiable character as those in Abstract 26317 (T. D. 31813), were held dutiable as manufactures of metal (par. 199).

No. 36803.—GLYCERIN.—Protest 596909 of Alpers & Mott (New York).

BROWN, *General Appraiser:* The merchandise is stated in the appraiser's report to consist of refined glycerin according to the United States chemist's report.

It was classified at 3 cents per pound under the last clause of paragraph 24, act of 1909, as "glycerin, refined." It is claimed to be dutiable under the first clause of said paragraph at 1 cent per pound as "glycerin, crude, not purified."

At the first trial evidence of Dr. R. E. Ozias, Government chemist, was excluded on the ground that it was incumbent upon the Government to first produce a part of the sample which the chemist had analyzed, in order that the importers might have an opportunity to test the correctness of his analysis. On appeal this ruling was held to be error and the case sent back by the United States Court of Customs Appeals for a new trial. United States *v.* Alpers & Mott (4 Ct. Cust. Appls., 19; T. D. 33201).

This case turns solely upon the question of fact: Is the glycerin here involved crude, not purified, or is it refined?

The importer testifies that he has handled this kind of glycerin for a long time; that it is in its crude state, as it comes as a by-product in the making of candles, and that it has not been subjected to any process of refining. He says he can tell this by the eye and by his experience and practice with the article.

The importer also testifies that the price at which it was invoiced would indicate that it was crude; that if it had been refined it would have cost more at that time.

The chemist for the Government who analyzed the sample reported that it consisted of refined glycerin. He testified, however, that he reached this result by a negative process of reasoning, from the fact that he did not find such impurities as he claimed would naturally occur in crude gylcerin, namely, that he only found a trace of chlorides and a trace of sulphates and no lime. Having stated this he was asked (p. 5 of the record):

Q. Now state whether or not the combined results of those states which you have enumerated enabled you to determine whether or not the merchandise was crude or refined; answer yes or no?—A. I can express an opinion there.

Q. Well, please do so?

Q. (By General Appraiser McCLELLAND.) Is it impossible for you to answer yes or no?—A. Absolutely; I would rather express an opinion.

Q. No; counsel has asked whether the tests you have made enabled you to say whether it was refined; now if you can answer yes or no, do so?—A. In my opinion yes.

Q. (By Mr. LAWRENCE.) What do you mean by that last answer?—A. It enables me to decide that it was refined glycerin.

But further, on page 8, in answer to the question—

Q. Whether or not a crude glycerin had been put through subsequent processes of refinement, or whether glycerin in its more or less pure state was a direct product from the saponification of fat, you are not able to determine by chemical analysis, are you?

he replied:

A. Certainly not.

And on page 10:

Q. You, of course, are not prepared to state, doctor, as a chemist, that the glycerin had been refined, but you are willing to state that it is of a high standard of purity, is that right?—A. The qualitative examination indicated to me refined glycerin.

Q. I did not ask you that. Are you willing to state here under oath that the glycerin is a product arrived at from a cruder glycerin?—A. I am not willing to say that.

On this state of the record we are not willing to classify the merchandise as refined. We are therefore constrained to hold that this merchandise should be classified as crude glycerin, not purified, at 1 cent per pound under paragraph 24.

Protest sustained

No. 36804.—Drugs—Herbs, Cut or Ground.—Protests 604497, etc., of Peek & Velsor (New York). Opinion by Brown, G. A.

Horsemint, hyssop, wild marjoram, and bittersweet stems, cut or ground to a rather fine condition, classified as drugs advanced in value or condition under paragraph 20, tariff act of 1909, were claimed free of duty as crude drugs (par. 559). Protests overruled. Abstract 36209 (T. D. 34677) followed.

No. 36805.—Indigo Paste.—Protests 445582, etc., of Farbenfabriken of Elberfeld Co. (New York). Opinion by Brown, G. A.

Klipstein *v.* United States (4 Ct. Cust. Appls., 510; T. D. 33936) followed as to indigo paste.

No. 36806.—Chemical or Medicinal Compounds.—Protest 753405 of Smith, Kline & French Co. (Philadelphia). Opinion by Brown, G. A.

Merchandise classified as chemical or medicinal compounds under paragraph 17, tariff act of 1913, was claimed to be dutiable as magnesia (par. 42), or compounds of alumina and alum (par. 6). Protest overruled.

No. 36807.—Coal-Tar Bases.—Protest 685481 of C. Bischoff & Co. (New York). Opinion by Brown, G. A

Coal-tar bases classified as colors under paragraph 15, tariff act of 1909, were claimed dutiable as preparations of coal tar not colors or dyes under the same paragraph. Protest sustained on the authority of United States *v.* Badische (5 Ct. Cust. Appls., —; T. D. 34400).

No. 36808.—Marmalade in Jars—Fish in Tins.—Protest 463596 of Lang & Co. (Portland, Oreg.). Opinion by Brown, G. A.

Glass jars containing marmalade, classified under paragraph 97, tariff act of 1909, were held dutiable at the ad valorem rate applicable to their contents. United States *v.* Conkey (3 Ct. Cust. Appls., 245; T. D. 32564), G. A. 7377 (T. D. 32644), and Abstract 35684 (T. D. 34468) followed. Kippered herrings, classified as fish in tins under paragraph 270, were held dutiable under paragraph 272 on the authority of United States *v.* Rosenstein (1 Ct. Cust. Appls., 304; T. D. 31357).

No. 36809.—Fish Balls, Etc.—Protests 652992–42615, etc., of the P. V. Bright Brokerage Co. (Chicago). Opinion by Brown, G. A.

Fish balls, fish carbonates, and fish pudding in tins were held properly classified under paragraph 270, tariff act of 1909. Benson *v.* United States (4 Ct. Cust. Appls., 467; T. D. 33882) followed.

No. 36810.—Fish in Tins.—Protests 695038, etc., of Hawley & Letzerich (Galveston), and protest 692185 of Von Bremen, Asche & Co. (New York). Opinions by Brown, G. A.

United States *v.* Smith (4 Ct. Cust. Appls., 70; T. D. 33312) and United States *v.* Miller (5 Ct. Cust. Appls., —; T. D. 34443) followed as to fish in tins.

Before Board 2, October 30, 1914.

No. 36811.—Twist Drills.—Protest 582695–40774 of Ivor P. Jones (Chicago). Opinion by Fischer, G. A.

Protest overruled as to twist drills classified as manufactures of metal.

BEFORE BOARD 3, OCTOBER 30, 1914.

No. 36812.—SHORTAGE—NONIMPORTATION.—Protest 729503 of B. Illfelder & Co. (Philadelphia). Opinion by Waite, G. A.

Protest sustained claiming a shortage in an importation of paper horns.

No. 36813.—VEGETABLE ALBUMEN—WHEAT PRODUCTS—CEREAL MEAL.—Protest 750669 of P. C. Kuyper & Co. (New York).

HAY, *General Appraiser:* The merchandise in this case is invoiced as vegetable albumen, assessed for duty at 15 per cent under paragraph 385 of the tariff act of 1913. It is claimed to be free of duty under paragraph 392 as albumen not specially provided for, or under paragraph 644, which reads in part as follows:

644. Wheat, wheat flour, semolina, and other wheat products, not specially provided for in this section. * * * .

At the hearing the importer testified that the commodity in question was obtained by a process of washing wheat flour with water to remove as much of the starch as possible, the residue being a gluey substance, which is dried and powdered; that the commodity in question consists of nothing but the product of the wheat obtained in this way. A chemist's report, which was offered and received in evidence, after stating his analysis as 77.9 protein, 10 per cent starch, 12.1 per cent moisture and fat, says that it is not albumen, but evidently a cereal meal treated in such a way as to get rid of most of the starch and leave most of the protein; that it is evidently derived from wheat, corn, rye, or barley. Upon this record we think the commodity should be classified under paragraph 644. The protest is therefore sustained and the collector directed to reliquidate the entry accordingly.

Decisions on Applications for Rehearings.

No. 36814.—REHEARING DENIED.—Application by the protestants for rehearing in protests 676976, etc., of Quong Lee & Co. et al. (San Francisco), Abstract 36300 (T. D. 34727). No. 792. Before Board 1, October 5, 1914.

No. 36815.—REHEARING GRANTED—WOOD PULP AND PAPER.—Application by the protestant for rehearing in protests 648990, etc., of M. B. Carlin (Baltimore), Abstract 36486 (T. D. 34763). No. 799. Before Board 3, October 5, 1914.

No. 36816.—REHEARING GRANTED—WEARING APPAREL.—Application by the protestant for rehearing in protest 715163 of J. L. Vandiver (Philadelphia), Abstract 36417 (T. D. 34756). No. 798. Before Board 2, October 13, 1914.

No. 36817.—REHEARING GRANTED—IMITATION HORSEHAIR HATS, ETC.—Application by the protestants for rehearing in protests 290373, etc., of J. & H. Rosenberg et al. (New York), Abstract 36506 (T. D. 34774). No. 800. Before Board 2, October 13, 1914.

No. 36818.—REHEARING GRANTED—ARTICLES OF PERSONAL ADORNMENT.—Application by the protestants for rehearing in protest 741720 of the International Forwarding Co. (Chicago), Abstract 36439 (T. D. 34756). No. 801. Before Board 1, October 13, 1914.

No. 36819.—REHEARING GRANTED—AMERICAN GOODS RETURNED—IRON DRUMS.—Application by the protestants for rehearing in protest 729192 of Strong & Trowbridge Co. (New York), Abstract 36459 (T. D. 34763). No. 803. Before Board 3, October 13, 1914.

No. 36820.—REHEARING GRANTED—RELIQUIDATION.—Application by the protestants for rehearing in protest 610720 of Zucca & Co. (New York), Abstract 36544 (T. D. 34774). No. 804. Before Board 3, October 21, 1914.

No. 36821.—Rehearing Granted—Lava Stone.—Application by the protestants for rehearing in protest 695748 of T. D. Downing & Co. (New York), Abstract 36488 (T. D. 34774). No. 806. Before Board 1, October 23, 1914.

(T. D. 34872.)

Inspectors' fees.

Atlantic Transport Co. *v.* United States (No. 1337).

1. Jurisdiction.

The court may at any stage raise the question of jurisdiction of the subject matter, and the determination of the trial court that it has jurisdiction adds nothing to the force of its judgment.

2. Board's Jurisdiction Under Subsection 14 of Section 28, Act of 1909.

The appellant was required to pay for the services of inspectors who supervised the loading of a vessel at night and on Sundays and holidays. Subsection 14 of section 28, tariff act of 1909, was not intended to confer jurisdiction upon the board in any cases other than those related to duties or charges on imported goods, and the charges here could not be reviewed.—Czarnecki's case, G. A. 3785 (T. D. 17851).

3. Drawbacks and the Secretary of the Treasury.

The jurisdiction to allow or refuse drawbacks is vested in the Secretary of the Treasury, and it would seem incongruous to vest in another tribunal the decision of questions relating to the charges connected with the exportation of drawback goods, which in effect result in a reduction of the allowance of drawback.

United States Court of Customs Appeals, October 29, 1914.

Appeal from Board of United States General Appraisers, G. A. 7513 (T. D. 33979) and Abstract 34480 (T. D. 34069).

[Affirmed.]

Comstock & Washburn (*J. Stuart Tompkins* on the brief) for appellant.

Bert Hanson, Assistant Attorney General (*Charles E. McNabb*, assistant attorney; *William A. Robertson*, special attorney, on the brief), for the United States.

Before Montgomery, Smith, Barber, De Vries, and Martin, Judges.

Montgomery, Presiding Judge, delivered the opinion of the court:

This protest is against the action of the collector in requiring protestants to pay for the services of inspectors while supervising the loading of a vessel at night and on Sundays and holidays. The vessel was being laden with goods upon which a drawback was claimed. The protest was overruled, and the protestants appeal. Before the hearing, counsel for the Government entered a motion to dismiss the proceedings for want of jurisdiction. This motion was overruled, and the case proceeded to final decision as above stated.

In this court Government's counsel reasserts the claim that the board is not given jurisdiction of this class of cases. It is suggested on behalf of the protestants that as there was no appeal from the order overruling the motion to dismiss, the question is now foreclosed. It would seem, however, that the court may at any stage raise the question of jurisdiction of the subject matter, and should do so, and that the determination of the trial court that it has juris-

diction adds nothing to the force of its judgment. See Brown on Jurisdiction (second edition, sec. 26, at pp. 131 and 132), where it is said:

If the court lacks jurisdiction over the subject matter of the controversy, all the authorities agree that the judgment is void, however honestly it may believe it is acting rightfully, whatever may be the recitals of its record, however formal may be its acts, or however judicious its conclusions. If it lacked power to perform the judicial act it undertook, its findings that it had jurisdiction adds nothing to the verity of its pretended judgment. Its power was usurped, and its finding that it possessed the power in no way confers it.

See also Railroad Co. *v.* Swan (111 U. S., 379, at pp. 382 and 383).

Furthermore, the decision of the motion was interlocutory and no appeal could have been taken therefrom. Brady *v.* Railroad Co. (73 Mich., 457).

The question of jurisdiction therefore stands for decision, and the question, stated briefly, is whether subsection 14 of section 28 of the act of 1909, corresponding to section 14 of the customs administrative act of 1890, was intended to confer jurisdiction upon the board in any cases other than those relating to duties or charges on imported goods.

In the decision of this question, consideration should be given to the fact that importation is complete before any action to secure a drawback becomes necessary, and that the jurisdiction to allow or refuse drawbacks is vested in the Secretary of the Treasury; hence there would be a seeming incongruity in vesting in another tribunal the decision of questions relating to the charges connected with the exportation of drawback goods, which in effect result in a reduction of the allowance of drawback. If the statute confers such jurisdiction, the seeming incongruity would not of course be an obstacle to its enforcement, but the circumstance throws a sidelight on the question.

Another significant fact is that the appeals to this court authorized by subsection 29 of section 28 of the act of 1909 were obviously intended to cover the same class of cases as were brought within the jurisdiction of the board by subsection 14. These two subsections should be construed together and are intended to outline the cases in which the judicial action by the board and of this court was authorized. If this be not so—that is, if it be held that it was the intention of Congress to vest the board with jurisdiction in a class of cases not made appealable to this court—this conclusion would be fatal to the appellants in this case for want of jurisdiction of this court to review the board's decision. We think, however, that no purpose on the part of Congress to vest a jurisdiction in the board over cases not reviewable by this court (except in appraisements) can be found if the terms of the act as a whole be considered.

The pertinent provisions are as follows:

SEC. 14. That the decision of the collector as to the rate and amount of duties *chargeable upon imported merchandise*, including all dutiable costs and charges, and

as to all fees and exactions of whatever character (except duties on tonnage), shall be final and conclusive against all persons interested therein, unless the owner, importer, consignee, or agent of such merchandise, or the person paying such fees, charges, and exactions other than duties, shall, within fifteen days after but not before such ascertainment and liquidation of duties, as well in cases of merchandise entered in bond as for consumption, or within fifteen days after the payment of such fees, charges, and exactions, if dissatisfied with such decision, give notice in writing to the collector, setting forth therein distinctly and specifically, and in respect to each entry or payment, the reasons for his objections thereto, *and if the merchandise is entered for consumption shall pay the full amount of the duties and charges ascertained to be due thereon.* Upon such notice and payment the collector shall transmit the invoice and all the papers and exhibits connected therewith to the board of nine general appraisers, for due assignment and determination as hereinbefore provided; such determination shall be final and conclusive upon all persons interested therein, and the record shall be transmitted to the proper collector or person acting as such, who shall liquidate the entry accordingly, except in cases where an application shall be filed in the United States Court of Customs Appeals within the time and in the manner provided for in this Act.

SEC. 29. The Court of Customs Appeals established by this Act shall exercise exclusive appellate jurisdiction to review by appeal, as provided by this Act, final decisions by a board of general appraisers in all cases as to the construction of the law and the facts respecting the classification of merchandise and the rate of duty imposed thereon under such classification, and the fees and charges *connected therewith,* and all appealable questions as to the jurisdiction of said board, and all appealable questions as to the laws and regulations governing the collection of the customs revenues; and the judgment or decrees of said Court of Customs Appeals shall be final in all such cases. * * * Said Court of Customs Appeals shall have power to review any decision or matter within its jurisdiction and may affirm, modify, or reverse the same and remand the case with such orders as may seem to it proper in the premises, which shall be executed accordingly.

It will be noted that the jurisdiction conferred upon this court is to review final decisions by a board in all cases as to construction of the law and facts respecting the classification of merchandise and the rate of duty imposed thereon and the fees and charges *connected therewith.* This would seem to be clear, and it would appear that without extending unwarrantably the terms of the statute conferring jurisdiction the court could not take jurisdiction of a case involving fees and charges in no way connected with the importation of merchandise or the steps taken toward a proper classification. The later provision above quoted in no way enlarges the class of cases in which jurisdiction is given.

Turning to subsection 14, we find that while the intent is not so clearly expressed as in subsection 29, yet the purpose to restrict the jurisdiction as to fees and exactions to such fees and exactions as relate to imported merchandise is fairly to be inferred, if we read the broad language in connection with other provisions of the act. In declaring the class of cases in which the decision of the collector is to be deemed final, it refers to duties chargeable upon imported merchandise, *including* dutiable costs and charges and as to all fees and exactions of whatever character, except duties on tonnage. If this broad language is segregated from its context, it might be broad

enough to include all fees and exactions by the collector. But the collector of customs may exact fees in a class of cases which have no relation whatever to the collection of duties on imports or have no connection with imported merchandise. This act was clearly not intended to cover such fees and exactions. What follows in the course of the paragraph indicates that the purpose was to restrict this language to cases which had relation to imported merchandise. The remedy providing the method of procedure, the transmission of papers from the customhouse, the effect of the determination by the board, and following upon this the appeal to this court provided for by the subsequent section all indicate a purpose to provide a remedy for persons paying fees, charges, and exactions other than duties in connection with imported merchandise.

The American Express Co.'s case, G. A. 6552 (T. D. 27962), in no way conflicts with the above views. In that case the costs and charges were exacted in connection with imported goods, although the goods had not been entered.

A case much more in point is Czarnecki's case, G. A. 3785 (T. D. 17851). In that case the collector required the payment of a sum for the expense of affixing internal-revenue stamps to unclaimed and abandoned cigarettes. It was held that while the action of the collector amounted to an exaction the board had no jurisdiction over the subject. Referring to section 14 of the act of June 10, 1890, the board said:

> The words of section 14 of the act of June 10,1890, under which this appeal is brought, "and as to all fees and exactions of whatever character," are general and comprehensive. But it is one of the plainest principles of statutory interpretation that the words of a statute are to be understood in the sense in which they best harmonize with the subject of the enactment and the object which the legislature had in view and that all words, if they be general, and not express and precise, are to be restricted to the fitness of the matter; that is, they must be understood as used in reference to the subject matter in the mind of the legislature, and strictly limited to it. (Endlich, secs. 73–86).
>
> Now, the act of June 10, 1890, refers to the importation of merchandise and various incidents relating thereto, and this, and nothing else, was the subject matter in the mind of Congress. We think, therefore, that the fees and exactions which are made appealable by section 14 must relate to imported merchandise and must affect the rate and amount of duty or the costs and charges chargeable thereon.
>
> We can not suppose that Congress intended to give an appeal to this board from a decision of the collector as to fees and exactions made by him in the multifarious duties imposed on him by law under the direction of the Secretary of the Treasury not in any manner relating to the importation of merchandise.

This case was followed by the board in *In re* Kelly, G. A. 3786 (T. D. 17852). See also *In re* Baldwin, G. A. 4283 (T. D. 20129) and Palm's case, G. A. 5208 (T. D. 24002).

It is true that the board in the case of Ezquiaga, G. A. 4773 (T. D. 22507), took jurisdiction of a protest against exactions of light duties exacted by the collector of San Juan, P. R. While the question of

jurisdiction seems not to have been much discussed, jurisdiction in such case was assumed.

The case of United States *v.* Hall Coal Co. (134 Fed., 1003) involved the question of whether the Board of General Appraisers had jurisdiction to determine whether dockage charges were dutiable as a portion of the costs of repairs of a vessel in a foreign port, such dockage charges having been made the subject of assessment by the collector. The court affirmed the jurisdiction, but rested the decision on the distinct ground that Congress had intended to vest the board with jurisdiction to review decisions of the collector as to all collections of duties which he might be legally authorized to impose upon imported merchandise. After quoting the language of section 14, the court adds:

> * * * The language just quoted, which is a part of section 14, considered in connection with section 3114, under which the duty was assessed, would seem to be sufficiently comprehensive to clothe the board with power and jurisdiction to review all duties on imports assessed by a collector,

and proceeds to distinguish the case from that of *In re* Fassett (142 U. S., 479), where the subject of the collector's assessment was not liable to duty, and where it was accordingly held that the collector's action was not open to review by the board.

We think the present case falls clearly within the reasoning of Czarnecki's case, *supra*, and we do not consider the Hall case an authority sustaining the claim of jurisdiction in this case.

It follows from the views expressed above that the decision of the board denying relief under this protest must be *affirmed*, but without prejudice to the right of the protestants to take any proceedings advised before the proper tribunal.

(T. D. 34873.)

Olive oil in tins.

UNITED STATES *v.* YOUNGLOVE GROCERY CO. (NO. 1360).

OLIVE OIL—TINS CONTAINING LESS THAN 5 GALLONS EACH.

The merchandise was olive oil contained in tins, the oil in each container being slightly less than 5 gallons in quantity. *Held*, under paragraph 38 of the tariff act of 1909, the oil was dutiable at 50 cents per gallon as olive oil in tins containing less than 5 gallons each, and this notwithstanding the Treasury regulation of June 20, 1911 (T. D. 31711).

United States Court of Customs Appeals, October 29, 1914.

APPEAL from Board of United States General Appraisers, Abstract 34988 (T. D. 34279.) [Reversed.]

Bert Hanson, Assistant Attorney General (*Leland N. Wood*, special attorney), for the United States.

Submitted on record by appellee.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MARTIN, Judge, delivered the opinion of the court:

This appeal relates to olive oil which was imported in tins under the tariff act of August 5, 1909.

It is conceded that the importation was dutiable under paragraph 38 of that act, reading as follows:

38. Olive oil, not specially provided for in this section, forty cents per gallon; in bottles, jars, kegs, tins, or other packages, containing less than five gallons each, fifty cents per gallon.

The collector assessed duty upon the oil at the rate of 50 cents per gallon under the latter provision of the foregoing paragraph.

The importers protested against this assessment, claiming duty upon the importation at the rate of 40 cents per gallon under the former provision of the paragraph.

The protest was heard by the Board of General Appraisers and was sustained, from which decision the Government now prosecutes its appeal.

It will be observed that paragraph 38, *supra*, divides olive oil when imported in tins into two classes. One class consists of oil in tins containing less than 5 gallons each; such oil is dutiable at 50 cents per gallon. The other class consists of oil in tins which do not contain less than 5 gallons each; such oil is dutiable at 40 cents per gallon. It has been held by this court in repeated cases that the duty in question is imposed upon the contents of the tins and not upon their capacity. The controlling question therefore is whether the tins in question actually contained less than 5 gallons of olive oil each. If so, the collector's assessment should be sustained. United States *v.* Palma (4 Ct. Cust. Appls., 140; T. D. 33412), United States *v.* Sprague (4 Ct. Cust. Appls., 358; T. D. 33532), United States *v.* Moos & Co. (5 Ct. Cust. Appls., —; T. D. 34528).

The answer to this question may be found in the report of the local appraiser and likewise in the invoice of the merchandise. The appraiser reported the contents of the imported tins to be 4.9932 gallons each. The invoice stated the contents to be 4.992 plus gallons each. These figures were adopted by the importers themselves in their protest.

It appears therefore that the olive oil was imported in tins containing slightly less than 5 gallons each, and upon the face of the statute the same was dutiable at 50 cents per gallon, as was assessed by the collector in this case.

This decision, however, should not be entered without a consideration of the Treasury regulation publishe l on June 20, 1911, as T. D 31711, which reads as follows:

TREASURY DEPARTMENT, *June 20, 1911.*

SIR: Referring to your letter of April 21, 1911, further in regard to the assessment of duty upon olive oil in so-called 5-gallon containers, I have to advise you that 30 days from the date hereof the measurement of olive oil in such containers for the purpose of assessing duty thereon shall be as follows:

Representative tins, covering every variation of the capacity of tins in a given shipment, shall be ordered to the appraiser's stores for examination, and the cubical capacity of the tin shall be there found and noted. This finding may be made either by a

measurement of the physical size of the tin and the computation thereof or by weighing all of the contents of the tin and the computation thereon as to the total cubical contents and capacity thereof. In the event this latter method is adopted, care must be taken that the computation is based upon the weight of the oil of the particular tin under consideration, as the statistics show that there is a considerable variation with different brands of olive oil. If the total cubical capacity of the tin is equal to 5 gallons or more and there is an outage of not exceeding 1 per cent, the entire shipment represented by the given tin may be liquidated upon the basis of 40 cents per gallon. If the outage is in excess of 1 per cent, a reasonable number of additional tins from the same shipment shall be examined and the liquidation of the total shipment will be in accordance with the result of such examination. If the result of the examination of additional tins shall show an outage not exceeding 1 per cent, duty will be assessed at the rate of 40 cents per gallon; if the outage is in excess of 1 per cent, duty will be assessed at the rate of 50 cents per gallon upon the actual quantity imported under the provisions of paragraph 38 of the tariff act of August 5, 1909.

Respectfully, JAMES F. CURTIS,
(79883) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

It will be observed that the department in the foregoing instruction directs the collector to assess the lower rate of duty prescribed by paragraph 38 upon all tins of olive oil which have a capacity of 5 gallons whose contents do not fall short of that measurement by more than 1 per cent. The present importation comes within that description. The effect of this regulation is to establish an allowable outage of 1 per cent in such cases and thereby to alter to that extent the limitation fixed by Congress in the terms of the paragraph itself. This regulation, therefore, if enforced, would not result in giving effect to the terms of the statute as enacted, but to the contrary it would alter or amend the same. No special authority for this action by the department appears in the act, and it seems clear that such authority is not within the general powers of the department. The line of demarkation between the two rates of duty was unconditionally fixed by the terms of the act, and only legislative authority can either raise or lower the same. The regulation of June 20, 1911, is therefore held to be invalid. Ullman *v.* United States (1 Ct. Cust. Appls., 61, 63; T. D. 31032), Tracy *v.* Swartwout (10 Pet., 80, 99), Knoedler *v.* United States (113 Fed., 999), Morrill *v.* Jones (106 U. S., 466).

It may be argued that the contents of the tins now in question fall so slightly below 5 gallons as to bring the case within the rule of *de minimis* and to justify the assessment of the lower rate of duty nevertheless. In answer to this, however, it should be noted that the dividing line between the two classes of tins has been fixed by Congress with certainty and exactness, and this legislative purpose must be given certain and exact effect. Otherwise a variable and discretionary demarkation would replace the inflexible one prescribed by the act itself. Furthermore, it is no more permissible to assess the lower rate of duty upon tins which are slightly under 5 gallons in

contents than it would be to assess the higher rate of duty upon tins which are slightly over 5 gallons in contents. The rule of *de minimis* therefore does not apply to the present provision. Vandegrift *v.* United States (3 Ct. Cust. Appls., 176, 178; T. D. 32462), Greenbaum's case, G. A. 1785 (T. D. 13483), United States *v.* Leuder (154 Fed., 1).

The decision of the board is accordingly *reversed.*

(T. D. 34874.)

Sake—Leakage.

S. BAN CO. *et al.* *v.* UNITED STATES (No. 1361).

RICE WINE OR SAKE AND LEAKAGE.

It appears there had been leakage *in transitu* from some of the tubs of this importation. But section 307, tariff act of 1909, specifically provided that rice wine or sake should enjoy no constructive or other allowance for breakage, leakage, or damage during transportation—Furuya & Co. *v.* United States (2 Ct. Cust. Appls., 37; T. D. 32095).

United States Court of Customs Appeals, October 29, 1914.

APPEAL from Board of United States General Appraisers, Abstract 34745 (T. D. 34165).

[Affirmed.]

B. A. Levett for appellant.

Bert Hanson, Assistant Attorney General (*Charles E. McNabb*, assistant attorney, on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MARTIN, Judge, delivered the opinion of the court:

The merchandise in this case consists of sake or Japanese rice wine, which was imported under the tariff act of August 5, 1909. The present issue relates solely to the quantity of sake upon which duty was assessed by the collector and not to the rate of duty which was assessed.

The entire importation comprised 256 tubs of sake. The collector assessed duty upon the capacity of the several containers as returned by the gauger, less an allowance of 2½ per cent for wantage, in accordance with the Treasury regulation of June 27, 1905, published as T. D. 26547.

The importers protested against this assessment in the case of 30 of the imported tubs, claiming that the actual contents of these at importation were only 527.50 gallons, whereas under the rule adopted by the collector they were assessed at 570.40 gallons. The importers contended that duty should be assessed upon only the actual contents of the containers at importation and not upon their capacity.

The protest was submitted to the Board of General Appraisers and was overruled. The importers now appeal from that decision.

The record contains the testimony which was submitted to the board at the trial, and it fairly appears therefrom that the actual contents of the 30 containers at importation were less than their capacity to the extent claimed by the importers. The protest, however, does not attempt to state the origin or explanation of this shortage, and the testimony upon that subject is not entirely convincing. Nevertheless the evidence gives probability to the theory that the containers in question were substantially full at exportation and lost a part of their contents by leakage while *in transitu*. It also appears probable that the allowance of 2½ per cent for normal wantage was sufficient to cover any actual shortage in the contents of the containers at the time of exportation. The present record therefore, presents a question of leakage and not one of nonshipment.

Upon the foregoing interpretation of the record the present case falls directly within the rule established by paragraph 307 of the tariff act of 1909, the pertinent parts of which read as follows:

307. Still wines, including ginger wine or ginger cordials, vermuth, and rice wine or sake, and similar beverages not specially provided for in this section, in casks or packages other than bottles or jugs, if containing fourteen per centum or less of absolute alcohol, forty-five cents per gallon; * * *. *And provided further*, That there shall be no constructive or other allowance for breakage, leakage, or damage on wines, liquors, cordials, or distilled spirits. * * *

In the foregoing paragraph of the tariff act of 1909 Congress gave to sake the status of a still wine, and specifically provided that it should enjoy no constructive or other allowance for breakage, leakage, or damage during transportation. A different rule had obtained under the tariff act of 1897, wherein sake was not provided for *eo nomine*, but was left to assessment by similitude only. Peacock & Co. *v.* United States (2 Ct. Cust. Appls., 305; T. D. 32095).

In deciding an issue identical with the present one, under the tariff act of 1909, in the case of Furuya & Co. *v.* United States (2 Ct. Cust. Appls., 371; T. D. 32095), this court said:

The present tariff law (1909) is the first one which has fixed a rate of duty to be levied upon sake *eo nomine*. Under former acts that article was the subject of much litigation and there are many reported decisions relating to it. However, in the act of 1909, as appears by the above copy, sake was placed by name in the still-wine paragraph, and is therein called rice wine or sake. It nowhere distinctly appears that these two names apply only to the same identical article; that is, that they are exact synonyms. There may, indeed, be other kinds of rice wine besides sake; but the language of the act and the references to the article appearing in published cases make it safe to assume that the term "rice wine" at least includes sake, and that it is so used in the paragraph. As appears above, there follows in the same paragraph an express provision that there shall be no constructive or other allowance for leakage on wines. The question therefore arises whether there can be any allowance under the act for leakage of sake in transit in view of the provision that there shall be no allowance for leakage on wines.

Sake is made from rice by a process of fermentation, and grapes do not enter at all into its composition. In the ordinary use of terms, therefore, sake would not be called

a wine. Under prior tariff acts it was held to be dutiable by similitude at the same rate as still wines. But in the present act it is specially placed within the still-wine paragraph and expressly named therein as a wine. In the nomenclature adopted by the paragraph, therefore, it becomes a kind of wine, whether it would ordinarily be so designated or not. This description of sake as a kind of wine is followed in the paragraph by the provision that there shall be no allowance for leakage on wines. It seems, therefore, to be a reasonable and natural interpretation of these provisions taken together to hold that one of the wines on which there shall be no allowance for leakage is the kind of wine also called sake, which is expressly named as a wine in the preceding recital of the paragraph. This seems, indeed, to be the very purpose for which the name rice wine was used in the paragraph, for there was otherwise no need of making the meaning of the word sake more definite by the use of such an explanatory alternative name. In the tariff vocabulary of mercantile terms sake had come certainly to have even a prominent place; there was no uncertainty as to the article to which that name applied. The alternative name, rice wine, therefore, seems to have been used for the purpose of adding that much to the original meaning of the term, namely, that for the purpose of the paragraph sake was to be considered as a kind of wine and to be included within any of its provisions which applied generally to wines.

In accordance with the ruling in the Furuya case, *supra*, the decision of the board in the present case is *affirmed*.

(T. D. 34875.)

Small compasses.

SUSSFELD, LORSCH & CO. *v.* UNITED STATES (No. 1403).

SMALL CHEAP COMPASSES WITH NEEDLE AND DIAL.

It is agreed these goods, of chief value in brass, were improperly assessed by the collector. From the testimony and the exhibits themselves it appears these articles are not intended for use as parts of watches or watchcases or as field glasses, and they are not jewelry or parts thereof. They are intended to be used as a part of something else and were dutiable as articles or wares not specially provided for composed wholly or in part of metal under paragraph 199, act of 1909.

United States Court of Customs Appeals, October 29, 1914.

APPEAL from Board of United States General Appraisers, Abstract 35167 (T. D. 34307). [Reversed.]

Curie, Smith & Maxwell (*Thomas M. Lane* of counsel) for appellants.

Bert Hanson, Assistant Attorney General (*Leland N. Wood*, special attorney, on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

BARBER, Judge, delivered the opinion of the court:

The undisputed facts here are as follows: In March, 1913, the importers entered at the port of New York certain merchandise evidently described by the appraiser as parts of watch charms in the form of compasses, composed in chief value of brass, valued at over 72 cents per gross, and upon which the collector, in accordance with the appraiser's return, assessed duty at 75 per cent ad valorem under paragraph 448 of the tariff act of 1909. Liquidation was had at this rate in May of the same year.

The protests were duly filed in June following, and within 30 days thereafter were with the papers in the case transmitted to the Board of General Appraisers for determination.

These papers indicate that Mr. Higgins was the appraiser and Mr. Rosenberg the examiner who attended to the examination and appraisal of these importations.

At the hearing before the board the only testimony offered was by the importers, who called but one witness, Mr. Bowen, who testified that he was a customs examiner and passed the merchandise. He was shown two samples which are before us and which he testified were representatives of these shipments. These are small, apparently cheap compasses with needle and dial, on which the cardinal points and some intermediate points are indicated; degrees, however, are not shown. He testified that they were used in field-glass cases, also on the backs of watches, and other instruments; that perhaps they were capable of being used as watch charms, but he had not seen them so used; that he returned them for duty at 75 per cent ad valorem under paragraph 448 as materials of brass, and importers conceded before the board that these compasses are in chief value of brass. The evidence of the witness as to the use of these compasses seems to rest upon his observation as to the articles in which he has seen them in use.

In its opinion the board said the importers claimed the merchandise dutiable under paragraphs 109 and 199 of the same act. It further said that the testimony was clear that these compasses were used in field-glass cases, also on the backs of watches and other instruments, and not used as watch charms except in rare cases.

The opinion then states that the merchandise "more properly falls within the designation of paragraph 448 of said act for 'articles of every description finished or partly finished * * * composed * * * in chief value of * * * brass, * * * designed to be carried on or about or attached to the person,'" rather than under the clause therein providing for "all stampings * * * suitable for use in the manufacture of the foregoing articles (charms)." The board held the merchandise was not dutiable as claimed by importers and while not agreeing with the collector's classification declined to disturb it and overruled the protests.

In this court the importers contend that these compasses are dutiable at 45 per cent ad valorem as articles or wares not specially provided for composed wholly or in part of metal under paragraph 199 of the act, as claimed in their protest, and urge that the board's statement that the merchandise is articles designed to be carried on or about or attached to the person is in absolute conflict with the evidence and its own finding of fact as to the uses to which they are devoted.

The Government does not claim the assessment made by the collector was correct, but contends that these compasses are dutiable

under the part of paragraph 448 held applicable by the board. We here insert the material parts of that paragraph conveniently subdivided for the purposes of this case:

(*a*) Chains, * * * charms, * * * together with all other articles * * * finished or partly finished, * * * or composed wholly or in chief value of * * * brass, * * * and designed to be worn on apparel or carried on or about or attached to the person. * * *

(*b*) All stampings and materials of metal (except iron and steel) or of metal set with glass or paste, finished or partly finished, suitable for use in the manufacture of any of the foregoing articles. * * *

In view of the evidence, we accept as correct the finding of the board that these compasses are used in field-glass cases and on the backs of watches and other instruments, and they are in chief value of brass. We do not know what "other instruments" were referred to by the witness, but it must be assumed that they are instruments of utility rather than ornament. The word instrument is consistent only with that understanding.

Under this state of facts the question is, Under what paragraph are they dutiable? They are not, under the finding of the board, watch charms or parts thereof, neither are they, do we think, within the meaning of the first part of paragraph 448, designed to be worn on apparel or carried on or about or attached to the person.

These compasses, so far as the evidence discloses and so far as we can judge from their appearance, are themselves finished, but their condition, as well as the evidence, indicates that they are to become a part of something else. There is no hole, eyelet, or other provision in the rim or elsewhere by means of which they can be attached to something else, but apparently they are designed to be set or fastened *into* some other article, whatever it may be. In other words, while complete of themselves they are intended to be a part of something else, and we think, of themselves, they are not designed to be worn on apparel or carried on or about or attached to the person. If they are subsequently so used, it is because that use attaches to the articles of which they may later become a part.

The first part of paragraph 448 relates wholly to chains, pins, collar, cuff, and dress buttons, charms, combs, millinery or military ornaments, and other articles not *eo nomine* named, all of which would seem to be articles chiefly for ornament rather than utility, and we think these compasses or the field-glass cases, watches, or other instruments of which they are to become a part are not within the intendment of that part of the paragraph.

The testimony of the witness is to the effect that these compasses, one sample of which has a thickness of some three-eighths of an inch with a diameter of some five-eighths of an inch, while the other is somewhat less in these respective measurements, are, among other things, designed to be set in the backs of watches. Assuming this,

although such a use would hardly seem to be common, we do not think they are parts of watches or watchcases within the meaning of paragraph 112, because their use is foreign to the use and purpose of watches or their cases, and the same observations hold true regarding their use testified to by the witness as parts of field-glass cases. Field glasses are specifically dutiable under paragraph 108; their cases are not mentioned therein and if these compasses become parts of field-glass cases they do not seem to fall within the meaning of paragraph 108.

These observations, we think, all lead to the conclusion, and the only one that can be reached upon the evidence in this case in view of the exhibits, namely, that these cheaply constructed compasses, designed as they are to be a part of something else, although finished of themselves, are dutiable at 45 per cent ad valorem as manufactures of metal under paragraph 199, as claimed by the importers.

The Government suggests that the evidence hardly warrants the conclusion that these compasses are not to be devoted to the use mentioned in the first part of paragraph 448, but we think it can not, in view of the entire record and the exhibits, be otherwise held.

The Government somewhat urges that these compasses are commonly or commercially known as jewelry or parts thereof. There is no evidence of commercial designation and, whether they are parts of watchcases or parts of field-glass cases or other instruments, we do not feel warranted, on the record and exhibits, to hold that they are, in common understanding, jewelry or parts thereof.

The result is that we conclude this merchandise is dutiable under paragraph 199 and that the judgment of the Board of General Appraisers ought to be, and is, *reversed.*

(T. D. 34876.)

Christmas seals.

GIBSON ART CO. *v.* UNITED STATES (No. 1407).

LABELS.

The Christmas seals of the importation are used during the Christmas holidays by attaching them indiscriminately to all kinds of packages, regardless of the contents of these. They are not properly labels, and are not dutiable as such under paragraph 412, tariff act of 1909.

United States Court of Customs Appeals, October 29, 1914.

APPEAL from Board of United States General Appraisers, Abstract 34946 (T. D. 34247.)

[Reversed.]

Allan R. Brown for appellant.

Bert Hanson, Assistant Attorney General (*Thomas J. Doherty*, special attorney, on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MARTIN, Judge, delivered the opinion of the court:

The merchandise involved in this appeal consists of small paper disks, one kind being 1½ inches in diameter, the other being seven-

eighths of an inch in diameter. One of these kinds is embossed with a picture of a fir tree and the other with a picture of holly leaves and berries, both bearing the inscription "Merry Christmas." The tree and the leaves of the pictures are in green, the berries and outside borders being in red.

In the appraiser's official report upon the merchandise it is stated that "the merchandise is commonly known as Christmas seals, used in the decoration and sealing of Christmas packages and letters."

The merchandise was classified by the collector as "labels lithographically printed in less than eight colors, embossed or die-cut," within the terms of paragraph 412 of the tariff act of 1909, and accordingly duty was assessed thereon at the rate of 30 cents per pound.

The importers protested against the assessment, contending that the articles in question were not "labels," and claiming assessment at the rate of 20 cents per pound under the provision in the same paragraph for all other articles not therein specifically provided for and not exceeding eight one-thousandths of an inch in thickness.

The protest was heard by the Board of General Appraisers and was overruled, from which decision the present appeal is prosecuted by the importers.

The following is a copy of the pertinent parts of paragraph 412 of the tariff act of 1909:

412. Pictures, calendars, cards, labels, flaps, cigar bands, placards, and other articles, composed wholly or in chief value of paper, lithographically printed in whole or in part from stone, metal, or material other than gelatin * * *, shall pay duty at the following rates: Labels and flaps, printed in less than eight colors (bronze printing to be counted as two colors), but not printed in whole or in part in metal leaf, twenty cents per pound; cigar bands of the same number of colors and printings, thirty cents per pound; * * * all labels, flaps, and bands not exceeding ten square inches cutting size in dimensions, if embossed or die-cut, shall pay the same rate of duty as hereinbefore provided for cigar bands of the same number of colors and printings * * *; all other articles than those hereinbefore specifically provided for in this paragraph, not exceeding eight one-thousandths of one inch in thickness, twenty cents per pound; * * *.

It will be seen therefore that the sole question now in issue is whether the importations are "labels" under paragraph 412, *supra*. If the articles are such labels they would be dutiable under the paragraph at 30 cents per pound, as assessed. On the other hand, if the articles are not such labels they would be dutiable under the paragraph at 20 cents per pound, as claimed by the importers. No testimony at all was submitted to the board at the trial; therefore the statutory term "label" must be given its ordinary and usual signification in the consideration of the present case. The question therefore is, whether the present articles are "labels" in the common acceptation of that term.

In deciding such an issue the court must rely upon its common knowledge of the language, and should also consult those standard authorities which seek to express and preserve the common knowledge upon that subject. The following quotations from dictionaries and like authorities are therefore given as aids in ascertaining the common signification of the term in question:

Label.—A slip of paper or any other material, bearing a name, title, address, or the like, affixed to something to indicate its nature, contents, ownership, destination, or other particulars.—*Century.*

Label.—A narrow slip of silk, paper, etc., affixed to anything, denoting its contents, ownership, or the like; as, the label of a bottle or a package.—*Webster.*

Label.—A slip or tag of paper or other material affixed to something and bearing an inscription to indicate its character, ownership, or destination.—*Standard.*

Label.—A small piece of paper, or other material, containing a name, title, or description, and affixed to anything to indicate its nature or contents.—*Worcester.*

Label.—A slip of paper, cardboard, metal, etc., attached or intended to be attached to an object and bearing its name, description, or destination. (The chief current sense.)—*Oxford.*

Label.—(A French word, now represented by *lambeau*, possibly a variant; it is of obscure origin and may be connected with a Teutonic word appearing in the English "lap," a flap or fold), a slip, ticket, or card of paper, metal, or other material, attached to an object, such as a parcel, bottle, etc., and containing a name, address, description, or other information for the purpose of identification. * * * —*Encyclopædia Britannica.*

Label.— * * * (*c*) The usual meaning now, a strip or small piece of paper, sheet metal, cloth, or other material, attached to a package to describe it in some way, as to tell its nature, the maker, the weight, destination, or any other information concerning it. * * * —*International Encyclopædia.*

Label.—A placard or slip attached to an object to denote its contents, destination, or ownership; a slip of paper or any other material bearing a name, title, address, or the like, affixed to something to indicate its nature, contents, ownership, destination, or other particulars; a small piece of paper, or other material, containing the name, title, or description, and affixed to indicate its nature or contents; a narrow slip of silk, paper, parchment, etc., affixed to anything denoting its contents, ownership, and the like.—*Cyclopedia of Law and Procedure.*

A trade-mark may, sometimes, it is true, in form, serve as a label, but it differs from a mere label in such cases in that it is not confined to a designation of the article to which it is attached, but by its words or design is a symbol or device which, affixed to a product of one's manufacture, distinguishes it from articles of the same general nature manufactured or sold by others, thus securing to the producer the benefits of any increased sale by reason of any peculiar excellence he may have given it. Manufacturing Co. *v.* Trainer (101 U. S., 51, 53). A mere label is not intended to accomplish any such purpose, but only to indicate the article contained in the bottle, package, or box to which it is affixed.—*Mr. Justice Field in Higgins v. Keuffel (140 U. S., 428, 433).*

The authorities just cited agree with remarkable unanimity upon the definition of the term in question, and accordingly the name is held to signify a strip or small piece of paper, sheet metal, cloth, or other material attached to a package or article to describe it in some way, as by telling its nature, the name of the maker, its weight, destination, or some other information concerning it.

The foregoing definition seems to furnish a clear answer to the present inquiry. For the Christmas seals now in question are placed upon letters, parcels, and articles during the holidays as mere ornaments appropriate to the season and expressive of its spirit of cheer and good will, and are not designed at all for any utilitarian purpose. They may, indeed, serve in some measure to secure or seal up the package upon which they are placed, but such a use does not tend to establish their identity as labels, for they bear no relation at all to the character of the article or package upon which they may be placed, nor to the name of the maker thereof, nor to the use of the article, its weight, its value, its destination, its consignee, or any other fact concerning the same. As is well known, such seals are placed indiscriminately during the holidays upon all kinds of packages regardless of the character of their contents or of the transactions in which they appear; upon gifts, and also upon vended wares; upon articles of great value and also upon cheap and commonplace goods; upon packages passing between relatives and friends and also upon those passing between casual vendors and vendees. In fact, the use of such seals upon articles or packages signifies little more than that it is Christmas time, and this does not bring the seal within any one of the foregoing definitions of the term "label." To extend that term so as to include this article would be a distinct enlargement of its well-defined common acceptation.

In this view of the case the decision of the board is *reversed* and reliquidation is ordered.

(T. D. 34877.)

Drawback on oils.

Drawback on burning and lubricating oils manufactured by the Craycroft Oil Co., of [New York, N. Y., with the use of imported rapeseed oil.]

TREASURY DEPARTMENT, *November 3, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on burning and lubricating oils manufactured by the Craycroft Oil Co., of New York, N. Y., with the use of imported rapeseed oil in conjunction with domestic mineral oils.

A manufacturing record shall be kept, which will show, in addition to the usual data, the lot number and date of manufacture of each lot of burning or lubricating oil manufactured for exportation with benefit of drawback and the quantity of imported rapeseed oil and of domestic oils appearing therein. A sworn abstract from such manufacturing record shall be filed with each drawback entry.

The allowance shall not exceed the quantity of imported rapeseed oil appearing in the burning and lubricating oils exported, as shown by the abstract from the manufacturing record.

The sworn statement of the manufacturers, dated October 27, 1914, is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(102924.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34878.)

Drawback on cigarette tips.

T. D. 34561 of June 18, 1914, extended to cover cigarette tips manufactured by the Boucher Cork & Machine Co., of New York, N. Y., with the use of imported metal leaf and paper.

TREASURY DEPARTMENT, *November 4, 1914.*

SIR: The department's regulations of June 18, 1914 (T. D. 34561), providing for the payment of drawback on cigarette tips in reels or separately, manufactured by the Boucher Cork & Machine Co., of New York, N. Y., with the use of imported cork sheets and paper, are hereby extended to cover the same articles manufactured by the said company with the use of imported metal leaf designated as "imitation gold leaf," or "composition leaf," and with the use of imported paper.

The sworn statement of the manufacturers, dated October 28, 1914, is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(92087.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34879.)

Drawback on castor oil.

The department's regulations of August 1, 1896 (T. D. 17355), so far as they authorize the payment of drawback on castor oil manufactured from imported castor beans revoked.

TREASURY DEPARTMENT, *November 5, 1914.*

To collectors of customs and others concerned:

The department's regulations of August 1, 1896 (T. D. 17355), so far as they authorize the payment of drawback on castor oil and castor pumace manufactured from imported castor beans are hereby revoked.

Collectors of customs will notify manufacturers on whose products drawback is claimed under the provisions of the above regulations of the revocation of the same, and inform them that if drawback is to be

claimed on these commodities in the future applications for a new rate of drawback thereon should be made to the Secretary of the Treasury in conformity with article 3 of the drawback regulations (T. D. 31695 of June 16, 1911), as amended by T. D. 33703 of August 20, 1913.

(102975). ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 34880.)

Drawback on artificial leather.

Drawback is hereby allowed on artificial leather manufactured with the use of castor oil.

TREASURY DEPARTMENT, *November 5, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on artificial leather manufactured by the O'Bannon Corporation, of Boston, Mass., with the use of castor oil produced by the Baker Castor Oil Co., of New York, N. Y., from imported castor beans.

A manufacturing record shall be kept in the form described in the sworn statement of the manufacturers, dated October 15, 1914, which will show the lot number and date of manufacture of each lot of artificial leather manufactured for exportation with benefit of drawback, the quantity, length, and width of the artificial leather produced, and the quantity and identity of the castor oil used in the manufacture thereof. A sworn abstract from such manufacturing record shall be filed with each drawback entry.

The quantity of castor oil which may be taken as a basis for estimating the drawback shall not exceed the quantity used in the manufacture of the exported artificial leather, as shown by the sworn abstract from the manufacturing record.

The sworn statement of the manufacturers, dated October 15, 1914, above referred to, is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(102290-3.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 34881.)

Drawback on flavoring extracts.

Drawback on flavoring extracts manufactured by the Lehman-Rosenfeld Co., of Cincinnati, Ohio, with the use of domestic tax-paid alcohol.

TREASURY DEPARTMENT, *November 5, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on a flavoring extract designated as

"Ironbeer extract," manufactured by the Lehman-Rosenfeld Co., of Cincinnati, Ohio, with the use of domestic tax-paid alcohol.

The allowance shall not exceed the quantity of domestic tax-paid alcohol appearing in the exported flavoring extract, as shown by the sworn statement of the manufacturers, dated October 20, 1914, which is transmitted herewith for filing in your office.

Supplementary sworn statements covering other flavoring extracts manufactured by the said company with the use of domestic tax-paid alcohol may be filed and upon verification of such statements by the special agents drawback on the flavoring extracts covered thereby may be allowed in accordance with the provisions thereof.

Respectfully, ANDREW J. PETERS,
(102495.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Cleveland, Ohio.*

(T. D. 34882.)

Baggage forwarded in bond.

Regulations amended to require the forwarding by mail to the port of destination or exportation of advice of shipment.

TREASURY DEPARTMENT, *November 5, 1914.*

To collectors of customs and others concerned:

Articles 624, 625, and 626 of the Customs Regulations of 1908 are each hereby amended by the addition of the following:

The inspector supervising the shipment of the baggage shall prepare for signature by the collector or the deputy collector, or his own signature if no collector or deputy is located at the place of shipment, and forward to the collector at the port of destination or exportation a report of the shipment of such baggage in the following form, viz:

Treasury Department, Customs Cat. No. 6055 (T. D. 34882).

UNITED STATES CUSTOMS SERVICE.

Report of baggage forwarded in bond.

COLLECTION DISTRICT NO. ——,
Port of ——, ——, *191–.*

The COLLECTOR OF CUSTOMS,
—— ——.

The baggage covered by the check numbers enumerated below has this day been forwarded to your port under card manifest, corded and sealed, destined for [1] ——.

Check Nos.	Vessel.	Description of baggage.[2]	Bonded carrier.	Name of passenger or marks.
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

[1] "Delivery at —— in the United States," or "Exportation to a foreign country," as the case may be.
[2] Insert "Trunk," "Hand bag," "Bundle," "Box," "Suit case," etc.

——— ———,
Collector of Customs.

(92819–6.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 34883.)

Customs forms abolished.

"Affidavit for free entry under bond of machinery for repair" (Cat. No. 3329) and "Proof required of use of materials in construction or repair of vessels" (Cat. No. 4459) abolished.

TREASURY DEPARTMENT, *November 5, 1914.*

To collectors and other officers of the customs:

Inasmuch as the regulations for the free entry of articles under six months' bond, published in T. D. 33806, dated October 24, 1913, provide that a certificate from the United States consul at the port of exportation shall be filed on entry of machinery, railroad iron, and other articles imported for repair under subsection 4 of paragraph J of section 4 of the act of October 3, 1913, Customs Cat. No. 3329, "Affidavit for free entry under bond of machinery for repair," prescribed in article 647 of the Customs Regulations of 1908, as amended by T. D. 31999, of November 11, 1911, will no longer be required. The form is therefore abolished.

As section 13 of the regulations governing the free entry of materials for the construction of vessels and their machinery, etc., under subsections 5 and 6 of paragraph J of section 4 of the said act, published in T. D. 34150, dated February 5, 1914, does not provide that the form of affidavit to be used in such cases shall be furnished by the department, Customs Cat. No. 4459, "Proof required of use of materials in construction or repair of vessels," is hereby abolished.

(93120.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 34884.)

Drawback on muskrat skins and plates.

Drawback on dyed and dressed muskrat skins and plates manufactured by the C. & E. Chapal Frères & Cie from imported muskrat skins and plates.

TREASURY DEPARTMENT, *November 4, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on dyed and dressed muskrat skins and plates manufactured by C. & E. Chapal Frères & Cie, of Brooklyn, N. Y., from imported muskrat skins and plates.

The imported skins shall be marked and their identity preserved in the manner described in the sworn statement of the manufacturers, dated October 26, 1914, and a manufacturing record shall be kept, which will show, in addition to the usual import data, the lot number and date of manufacture of each lot of skins and plates dyed and dressed for exportation with benefit of drawback, the number and value of the imported skins treated, and the quantity and value of

waste incurred. An abstract from such manufacturing record shall be filed with each drawback entry.

The allowance shall not exceed one imported muskrat skin or plate for each similar article exported, the allowance to be reduced according to the value of the waste.

The sworn statement of the manufacturers, dated October 26, 1914, is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(102911.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34885.)

Carbosolite.

Carbosolite dutiable as an article composed in chief value of earthy or mineral substance at the rate of 20 per cent ad valorem under paragraph 81, tariff act of 1913.

TREASURY DEPARTMENT, *November 7, 1914.*

SIR: I am in receipt of your letter of the 22d ultimo, transmitting a communication from the appraiser at your port in regard to a variance in practice in the classification of so-called "carbosolite."

It appears that at one port this merchandise, which the chemist at your port reports is composed chiefly of silicon and carbon, with some alumina and a trace of iron, is assessed with duty as an earthy or mineral substance, wholly or partially manufactured, at the rate of 20 per cent ad valorem under paragraph 81 of the tariff act, while at another port so-called "carbosolite" and merchandise similar in character when ground to the proper consistency are assessed with duty at the rate of 1 cent per pound under paragragh 343 of the tariff act by virtue of the similitude clause in paragraph 386 of the said act.

As it appears from the chemist's report that the article is composed in chief value of earthy or mineral substances, and is therefore specifically provided for in paragraph 81 of the tariff act, the department concurs in the opinion expressed by you that the similitude clause can not be invoked to classify the merchandise as ground emery at the rate of 1 cent per pound under paragraph 343 of the tariff act.

You are therefore directed to classify carbosolite and similar articles composed in chief value of earthy or mineral substances under paragraph 81 of the tariff act at the rate of 20 per cent ad valorem.

Respectfully, ANDREW J. PETERS,
(70760.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34886.)

Plumage.

The plumage of the rhea or so-called South American ostrich prohibited importation under paragraph 347 of the tariff act.—T. D. 34057 modified accordingly.

TREASURY DEPARTMENT, *November 9, 1914.*

SIR: The department refers to its letter addressed to you under date of January 13 last (T. D. 34057), in which you were authorized to admit the feathers of the so-called South American ostrich, or rhea, as ostrich feathers.

As further investigation by the department has shown that the rhea is not properly classified as an ostrich, but is in fact a wild bird, the plumage of which should be prohibited importation under paragraph 347 of the tariff act, that portion of T. D. 34057 which relates to the plumage of the rhea is revoked, and shipments of such plumage should be refused admission unless shown to have been actually shipped from abroad prior to the date hereof.

Respectfully, ANDREW J. PETERS,
(92655-27.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34887—G. A. 7626.)

Braids in chief value of india rubber threads.

YARNS, THREADS, OR FILAMENTS.

Paragraph 358, tariff act of 1913, provides for braids and other articles of "whatever yarns, threads, or filaments composed." *Held*, that elastic braids composed in chief value of india-rubber thread, which is recognized as a distinct article of commerce and bought and used as such by manufacturers of braids, are, in the absence of proof to show that the terms "yarns, threads, or filaments" have a meaning in trade and commerce different from the ordinary meaning, properly dutiable under paragraph 358 of said act.

United States General Appraisers, New York, November 4, 1914.

In the matter of protest 737001 of Calhoun, Robbins & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

HOWELL, *General Appraiser:* The merchandise in question is reported by the appraiser to consist of "elastic braid composed of silk and india-rubber threads and cotton and india-rubber threads." Duty was assessed thereon at the rate of 60 per cent ad valorem under paragraph 358, tariff act of 1913, the pertinent provision of which reads as follows:

358. * * * Braids, loom woven and ornamented in the process of weaving, or made by hand, or on any braid machine, knitting machine, or lace machine, and not specially provided for; * * * all of the foregoing of whatever yarns, threads, or filaments composed, 60 per centum ad valorem.

The importers contend that the goods are dutiable at a lower rate under one of the various provisions of the law cited in the protest.

The theory upon which they seek to exclude the articles from the provision in paragraph 358 under which they were assessed—as evidenced by the statement of their counsel at the trial—is that rubber is the component material of chief value in the braids, and that, in its condition as found in the braids, it is neither a "yarn," "thread," nor "filament." No evidence was introduced tending to show that the rubber as it enters into the braids is not a yarn, thread, or filament. The importers contented themselves with introducing in evidence three samples of the braids and requesting that they be analyzed under the direction of the board by the chief analyst in the appraiser's office at the port of New York. This request has been complied with; and it appears from the report of the analyst that rubber is the component material of chief value in Exhibits 1 and 2 and that silk is the component material of chief value in Exhibit 3. The contention is therefore limited to Exhibits 1 and 2. The analyses show that Exhibit 1 is composed of rubber threads No. 48 and cotton 90/2, and that Exhibit 2 is composed of rubber threads No. 9, rubber threads No. 48, and cotton 80/2.

On this record it would appear that the articles are composed of rubber *threads* and cotton yarns. Braids of this character have frequently been the subject of consideration by this board and the courts, and it has been shown by the testimony of expert witnesses that the india-rubber thread used in making elastic braids such as these here in question is a distinct article of commerce, having quotable value according to size and quality, and, as bought by manufacturers of braids, comes in warps or strands of great lengths ready for insertion in the tubes, which are set under the braiding machine. See G. A. 4332 (T. D. 20554).

It will be observed, also, that in the analyses of these goods which were made at the request of the importers, and on which they submitted the case, the analyst reports the rubber as in the form of thread, and proceeds to give the number or size of the thread. In the one case (Exhibit 1) the rubber thread is stated to be No. 48 and in the other case (Exhibit 2) as No. 9 and No. 48.

The importers submitted their case on these analyses and no evidence was introduced to show that the rubber, as found in the braids, is not a yarn, thread, or filament. It is reported by the analyst to be in the form of a thread, and, as we have stated, it appears to be so recognized in commerce. If, however, it be suggested that the rubber in the condition as found in these braids is not commercially known as a thread, and that the terms yarns, threads, and filaments have no meaning in trade and commerce different from the ordinary meaning, then we must have recourse to the dictionary definitions to ascertain the meaning of the terms. As defined by the lexicographers, yarns, threads, and filaments are described as follows:

Century Dictionary:

Filament.—A fine untwisted thread; a separate fiber or fibril of any vegetable or animal tissue or product, natural or artificial, or of a fibrous mineral; as a filament of silk, wool, cobweb, or asbestos.

Thread.—1. A twisted filament of a fibrous substance, as cotton, flax, silk, or wool, spun out to considerable length.

2. A fine filament or thread-like body of any kind; as a thread of spun glass, a thread of corn silk.

Yarn.—1. Originally, thread of any kind spun from natural fibers, vegetable or animal, or even mineral; now, more usually, thread prepared for weaving, as distinguished from sewing thread of any sort. The term is also applied to stout woolen thread used for knitting, etc.

Webster's Dictionary:

Filament.—A thread or thread-like object or appendage; a fiber; especially (Bot.), the thread-like part of the stamens supporting the anther.

Thread.—1. A very small twist of flax, wool, cotton, silk, or other fibrous substance, drawn out to considerable length.

2. Hence, quality, fineness.

3. A filament, as of a flower, or of any fibrous substance, as of bark; also, a line of gold or silver.

Yarn.—Spun wool; woolen thread; also, thread of other materials, as of cotton, flax, hemp, or silk; material spun and prepared for weaving.

Standard Dictionary:

Filament.—A fine thread, fiber, or fibril; any thread-like structure or appendage; as, a filament of silk or flax; the carbon filament in an incandescent lamp.

Thread.—1. A slender cord composed of two or more yarns or filaments, as of flax, cotton, silk, or other fibrous substance, twisted together.

2. A filament, fiber, or fine line of any substance; as, threads of gold.

Yarn.—1. Any fibrous material from a natural source, whether animal, mineral, or vegetable, that is made for use in weaving, knitting, embroidery, etc.; spun fiber, as wool, cotton, flax, silk, or jute; loosely, thread; also, a quantity of such spun material.

We think the rubber in the condition as found in these braids responds to these dictionary definitions of the words "yarns, threads, or filaments."

Therefore, in any view of the case, the protest must be, and it is hereby, overruled.

T. D. 34888—G. A. 7627.)

Decorated sprinkler tops—Trade-mark.

Sprinkler tops, the screw covers of which have embossed on the tops thereof a design representing a basket of flowers, are properly classifiable as decorated sprinkler tops, notwithstanding said design may be a duly registered trade-mark. Neither the time when the decoration was made nor the processes employed to produce the same can affect the dutiable status of a decorated article, the character or nature of the decoration itself being the sole controlling factor in determining its dutiability.

United States General Appraisers, New York, November 4, 1914.

In the matter of protest 730509 of Emile Utard against the assessment of duty y the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

FISCHER, *General Appraiser:* The official sample of the merchandise in question shows the same to consist of a sprinkler top composed of

metal and designed for use on bottles. Accompanying said sprinkler and serving as a screw cover therefor is a small detachable metal cap on the top of which is embossed a figure or design representing a basket filled with flowers.

The articles were classified as sprinkler tops, decorated, and duty was accordingly levied thereon at the rate of 40 per cent ad valorem under the specific provision therefor in the last half of paragraph 164, tariff act of 1913. The importer, however, contends that said sprinkler tops are not decorated and hence are properly dutiable at but 30 per cent ad valorem under the first half of said paragraph. Paragraph 164, in full, reads as follows:

164. Bottle caps of metal, collapsible tubes, and sprinkler tops, if not decorated, colored, waxed, lacquered, enameled, lithographed, electroplated, or embossed in color, 30 per centum ad valorem; if decorated, colored, waxed, lacquered, enameled, lithographed, electroplated, or embossed in color, 40 per centum ad valorem.

As a further and separate claim, the importer contends that, by virtue of the provision in paragraph J of subsection 7 of section 4 of said tariff act of 1913, a discount of 5 per cent should be allowed on all duties properly chargeable against said merchandise.

The testimony of John E. Coholen, a representative of the importer and the sole witness who appeared herein, is to the effect that the said embossed design which appears upon the covers of the sprinkler tops in question is in fact the duly registered trade-mark of the house with which he is connected; that as such it is used upon all of the products of his house, even to the extent of being molded or impressed on the glass bottles which are used to contain their goods; and that it is at present, and in fact for many years past has been, the uniform practice of the classifying officers of the Government to assess duty thereon as plain glass bottles.

Based upon this testimony, the counsel for the importer contends that the figure or design in question having been shown to be a trade-mark can not also be held to be a decoration, and he insists, in view of the long continued administrative practice of according entry as plain bottles to bottles whereon said figure has been molded or impressed, that the sprinkler tops which accompany said bottles, and which are designed to be affixed thereto, are likewise properly classifiable for duty as sprinkler tops, not decorated.

The testimony of said witness concerning the practice of the classifying officers of the Government in assessing with duty as undecorated articles having upon their surfaces the figure here in question is flatly contradicted by the published decisions of the courts and of this board.

In the case of *In re* Utard, G. A. 4769 (T. D. 22503), decided September 21, 1900—over 14 years ago, and wherein appeared the same importer who is now before us—precisely the same figure of a basket

of flowers was held to constitute a decoration. In so holding we there said:

As to the bottles represented by No. 2724, we are of the opinion that the picture of a basket of flowers on the label constitutes a decoration, and therefore find that the bottles are decorated by printing, painting, or otherwise.

Subsequently, on appeal, that decision was affirmed by the United States Circuit Court of Appeals for the Second Circuit in the case of Utard *v.* United States (128 Fed., 422; T. D. 25115).

Another protest filed by the same importer and covering the same class of merchandise was decided adversely to his contention in G. A. 5158 (T. D. 23790).

In United States *v.* Bernard, Judae & Co. (4 Ct. Cust. Appls., 403; T. D. 32841), the United States Court of Customs Appeals held that the word "Cenco" printed in a manner so as to be attractive in color and design in the center of a plate within two concentric circles, although a trade-mark, was nevertheless a decoration.

In Richard *v.* United States (4 Ct. Cust. Appls., 359; T. D. 33533) the same court held that the word "Rajah" "somewhat ornamented in design, though constituting a trade-mark, printed on spark plugs," was nevertheless a decoration.

Counsel for the importer further contends that unless the so-called decoration has been superimposed or added after the article was formed it will not fall within the terms of the paragraph as a sprinkler top, decorated.

The bottles covered by the decisions in the Utard cases hereinbefore cited were decorated in the molding and not by any distinct or additional subsequent process. However, it is not essential that a decoration should be the result of an added process, because many articles can be and are made ornamental and of a decorative character simultaneously with their production.

In United States *v.* Wakem & McLaughlin (2 Ct. Cust. Appls., 411; T. D. 32170), Judge Smith, after commenting upon the absurdity of the contention that Congress evidently intended to distinguish between the terms "colored-glass articles," "articles of colored glass," and "articles of glass, colored," remarked:

* * * We can not admit that "every one of the processes enumerated in the provision implies work done upon the glass articles after they have been given their form as such." * * * In our opinion neither the wording of the statute nor its legislative history justifies any such distinction or discrimination.

We therefore hold that the figure of a basket filled with flowers constitutes a decoration upon the sprinkler tops in question, and that the assessment of duty at 40 per cent ad valorem thereon was properly levied. The claim in the protest that they are dutiable at 30 per cent ad valorem, together with the claim for a 5 per cent discount on the duties collected, are overruled, and the decision of the collector is hereby affirmed. Note G. A. 7540 (T. D. 34246).

(T. D. 34889.)

Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, Somerville, and Hay.

BEFORE BOARD 3, NOVEMBER 4, 1914.

No. 36822.—FITTED LEATHER CASES.—Protests 757229, etc., of C. F. Rumpp & Sons (Philadelphia). Opinion by Hay, G. A.

Wicker baskets containing sewing sets were held dutiable under the first provision of paragraph 360, tariff act of 1913, as claimed. Abstract 33671 (T. D. 33763) followed. Protests sustained in part.

No. 36823.—COVERINGS OF LIQUIDS AND SEMILIQUIDS.—Protest 341377 of Basilia & Calandra (New York). Opinion by Hay, G. A.

United States *v.* Peabody (3 Ct. Cust. Appls., 130; T. D. 32383) followed as to coverings of liquids and semiliquids.

BEFORE BOARD 1, NOVEMBER 6, 1914.

No. 36824.—ACCORDIONS—MUSICAL INSTRUMENTS—TOYS.—Protest 670999 of Hensel, Bruckmann & Lorbacher (New York).

So-called blow accordions, classified as musical instruments under paragraph 467, tariff act of 1909, were claimed dutiable as toys (par. 431). Protest overruled.

SULLIVAN, *General Appraiser:* * * * The decision referred to by the examiner is probably G. A. 6417 (T. D. 27557), wherein the board held that full-size violins, so flimsily and cheaply constructed as to preclude their use as musical instruments by students or musicians, valued at less than 2 marks each, were toys. In that case the board said:

Upon the best information obtainable we find that violins costing 2 marks net each and upward are regarded by the trade as musical instruments, and that those costing less than 2 marks net each are toys.

In the matter of protests 670590, etc., of Sears, Roebuck & Co., G. A. 7579 (T. D. 34601), the board had before it small accordions with 10 keys. The board held in that case they were not toys, but musical instruments, and that cheapness of an article, without proof that the same is a toy or commercially known as such, does not entitle it to classification as a toy, especially if it is capable of practical use.

It would seem the criterion is not alone value, but in addition the use to which the article may be put. The musician would not buy this instrument to be used in an orchestra or band, yet the fact remains it can be used by beginners, and that, while it may not be used for rendering classical music, simple tunes can be played thereon. The testimony shows that to a certain extent it is sold to the music trade; and while a child may play with it—as he might with a more expensive and elaborate instrument—we do not think it can be called a toy. It is commonly known that children sometimes strum for amusement upon a piano, yet no one would think of a piano as a toy.

The Court of Customs Appeals in Illfelder *v.* United States (1 Ct. Cust. Appls., 109; T. D. 31115) defined toys as the implements of games which are *exclusively* the diversions of children. * * *

In the case at bar, commercial designation was not proven, nor that the article's exclusive use was for the amusement of children. Not only the testimony but a

mere inspection of the sample in evidence establishes that the merchandise has a use apart from the amusement of children.

In United States *v.* Kraemer (5 Ct. Cust. Appls., —; T. D. 34474) it was held that small brooches of brass and tin, having an artificial red rose in the center, were not toys, although cheaply constructed. * * *

It follows that, while children may use this instrument, it is not a plaything. It has 10 keys and in every way corresponds to a musical instrument. The fact that this merchandise is sold to the toy department or that 75 per cent may be used by children is not controlling as to classification. The merchandise has a utility purpose, and for beginners in music it may be as valuable as the most perfect instrument of its kind. We can not call it a toy. * * *

No. 36825.—Chemical Glassware.—Protests 659716, etc., of the Bausch & Lomb Optical Co. (Rochester). Opinion by Sullivan, G. A.

Articles composed of flint glass used in chemical laboratories and blood counting apparatus of glass and rubber were held properly classified as blown glass under paragraph 98, tariff act of 1909, on the authority of Scientific Supply Importing Co. *v.* United States (5 Ct. Cust. Appls., —; T. D. 34094). A plain glass rod called a stirrer was held dutiable as a manufacture of glass (par. 109).

No. 36826.—Hatpins—Rubber Jewelry.—Protest 372411 of Cohn & Rosenberger (New York). Opinion by Sullivan, G. A.

On the authority of United States *v.* New York Merchandise Co. (174 Fed., 1022; T. D. 30279), certain hatpins were held dutiable as manufactures of paste under paragraph 112, tariff act of 1897. Brooches made of hard rubber scrollwork with a pin and catch on the back, classified as jewelry under paragraph 434, were held dutiable as manufactures of hard rubber (par. 450). Abstract 35211 (T. D. 34307) followed. Protests sustained in part.

No. 36827.—Jewelry.—Protests 649022, etc., of Burby et al. (New York). Opinion by Sullivan, G. A.

Cohn *v.* United States (4 Ct. Cust. Appls., 378; T. D. 33536) followed as to merchandise commonly known as jewelry.

No. 36828.—Antipasto—Fish in Tins.—Protest 726110 of Poleti, Coda & Rebecchi (New York). Opinion by Brown, G. A.

Antipasto, classified as fish in tins under paragraph 270, tariff act of 1909, was claimed dutiable as a nonenumerated article (par. 480) or as fish in oil (par. 270). Protest overruled. G. A. 6535 (T. D. 27886), Abstract 34766 (T. D. 34186), and Benson *v.* United States (4 Ct. Cust. Appls., 467; T. D. 33882) cited.

No. 36829.—Nickel Sulphate—Chemical Compound.—Protest 736750 of Fuerst Bros. & Co. (New York). Opinion by Brown, G. A.

Nickel sulphate was held not to be an alloy of nickel, nor nickel, or nickel oxide under paragraph 155, tariff act of 1913, but properly dutiable as classified under paragraph 5 as a chemical compound or salt.

Before Board 2, November 6, 1914.

No. 36830.—Drawnwork Handkerchiefs.—Protest 500446 of F. M. Jabara & Bro. (New York).

Cooper, *General Appraiser:* The merchandise in question consists of ladies' cotton handkerchiefs which have been ornamented by withdrawing some of the threads and tying and looping the others to form figures, thus leaving a sort of openwork effect inside the hem. The open spaces in each corner have been filled in by having threads

inserted, either by hand or machinery, and a needlework design thus produced. Classification was made under the following provision in paragraph 322 of the act of 1909:

If such handkerchiefs * * * are embroidered in any manner * * * or are * * * trimmed wholly or in part with lace * * * or insertion, they shall not pay a less rate of duty than 60 per centum ad valorem.

Protestants claim that the articles are dutiable under the following provision in the same paragraph:

If such handkerchiefs * * * have drawn threads, they shall pay a duty * * * in no case less than 55 per centum ad valorem.

Another claim in the protest is that the articles are dutiable under paragraph 356, but as the provisions of that paragraph apply only to handkerchiefs composed of flax, hemp, or ramie, and these handkerchiefs are made of cotton, this claim is without merit.

This protest was decided by this board in Abstract 35849 (T. D. 34548) and the claim of the importer was sustained. We there held that, as the handkerchiefs were neither embroidered nor lace trimmed, they were dutiable at 55 per cent ad valorem, in accordance with the importers' claim. Within 30 days thereafter the Assistant Attorney General applied for a new trial of the case, and in his application called attention for the first time to the fact that such handkerchiefs were specially provided for in paragraph 349 as "handkerchiefs * * * from which threads have been drawn, cut, or punched to produce openwork, ornamented or embroidered in any manner herein described in any part thereof, however small."

From an examination of the sections now brought in question it is evident that the provision in paragraph 349, last mentioned, more accurately describes the articles before us than either of the provisions quoted from paragraph 322. In Frank *v.* United States (5 Ct. Cust. Appls., —; T. D. 34469), the Court of Customs Appeals held that the drawnwork provision in paragraph 349 does not cover all forms of drawnwork, but is limited to "ornamental" drawnwork. Paragraph 349 contains, therefore, the narrower provision; for handkerchiefs having ornamental drawnwork would be included in the broader class of handkerchiefs having drawnwork. It is therefore apparent that ornamental drawnwork handkerchiefs are dutiable under paragraph 349, and plain drawnwork handkerchiefs are dutiable under paragraph 322. We hold that the handkerchiefs in question are dutiable at 60 per cent ad valorem under paragraph 349. As duty was collected at the proper rate, although under the wrong paragraph, the collector's decision must be affirmed.

The protest is overruled.

No. 36831.—Mercerized Cotton Cloth—Figured Cotton Cloth.—Protests 706673, etc., of J. Sachs & Co. (New York). Opinion by Cooper, G. A.

Certain cotton cloth was held not to be mercerized. United States *v.* McConnell (1 Ct. Cust. Appls., 73; T. D. 31104) followed as to figured cotton cloth.

No. 36832.—Cotton Cloth.—Protest 698542 of J. N. Kennedy (New York). Opinion by Cooper, G. A.

Merchandise classified as woven fabrics of cotton and silk under paragraph 321, tariff act of 1909, found to contain a negligible quantity of silk, was held dutiable as countable cotton cloth, mercerized (par. 316 and 323).

Before Board 3, November 6, 1914.

No. 36833.—Original Paintings in Oil—Sufficiency of Protest.—Protest 731346 of W. S. Stimmel (Pittsburgh).

Waite, *General Appraiser:* The question here is as to whether certain oil paintings are dutiable under paragraph 376, or free of duty under paragraph 652 of the law of 1913.

Question arises also over the sufficiency of the protest, which reads as follows:

We hereby enter protest against payment of $138.45 duty on one case paintings imported by W. S. Stimmel, of Pittsburgh, Pa., on steamship *United States*, I. T. entry 32981, customs entry 1389, December 15, 1913.

I beg to respectfully call your attention to paragraphs 376 and 652, both of which are of conflicting nature. Paragraph 376, under which this entry was made, provides payment of 15 per cent duty, while paragraph 652 provides for free entry. I believe other importers have asked for a ruling and we hereby do the same, at same time protest payment of aforesaid duty of 15 per cent.

In our judgment, the claim is fairly made that the paintings in question should be classified under paragraph 652 instead of 376, where they were assessed. We therefore hold the protest sufficient.

Paragraph 376 reads as follows:

376. Works of art, including paintings in oil or water-colors, pastels, pen and ink drawings, or copies, replicas or reproductions of any of the same, statuary, sculptures, or copies, replicas or reproductions thereof, and etchings and engravings, not specially provided for in this section, 15 per centum ad valorem.

Paragraph 652 provides for free entry of various works of art, among which are "original paintings in oil."

It will be seen that paragraph 376 provides also for paintings in oil at 15 per cent. We think, however, that the provision for "original paintings in oil" is more specific, and we think those embraced in the importation before us are original paintings in oil, judging from the testimony of the witness, who saw the paintings, was familiar with the work of the artist who painted them, and swore positively they were his works and were painted by him originally; in other words, his testimony was that they were original paintings. We were not favored with a view of the paintings in question. There is nothing, however, in the case to contradict the positive statement of the witness. We therefore hold that they are original paintings in oil, and free of duty. The protest is sustained and the collector is ordered to make reliquidation accordingly.

No. 36834.—Antique Oak Mantelpiece.—Protest 731678 of Lenygon & Morant (New York). Opinion by Waite, G. A.

A carved oak mantelpiece was held entitled to free admission as an artistic antiquity under paragraph 717, tariff act of 1913.

No. 36835.—Artistic Antiquities—Regulations—Affidavits.—Protest 743575 of the E. Malley Co. (Bridgeport). Opinion by Waite, G. A.

Affidavits produced after entry were held not filed in compliance with the regulations under paragraph 717 of the tariff act of 1909. United States *v.* Morris (3 Ct. Cust. Appls., 146; T. D. 32386) cited regarding probative value of affidavits.

No. 36836.—Dried Red Peppers.—Protest 733512 of Alex. Murphy & Co. (Philadelphia). Opinion by Waite, G. A.

Dried red peppers, classified as vegetables in their natural state under paragraph 269, tariff act of 1909, were held dutiable as capsicum or red peppers (par. 298). G. A. 6248 (T. D. 26957) followed.

Treasury Department, *November 6, 1914.*

The appended decision of the United States District Court, Southern District of New York, is published for the information of customs officers and others concerned.

Andrew J. Peters, *Assistant Secretary.*

(T. D. 34890.)

Fraud.

UNITED STATES *v.* SALEN.[1]

District Court, Southern District of New York. June 30, 1914. July 9, 1914.

1. SUPPRESSION OF DOCUMENTS—PERJURY.

It is only necessary than an importer should have knowledge of some document which, if known, would have led the United States to fix customs duties higher than if the entry went through at the values fixed in the consular invoice to make him guilty of perjury in making an affidavit that nothing had been to his knowledge concealed or suppressed whereby the United States might be defrauded. It is not necessary that the suppression be in the entry or invoice, or that it be of a document which would, in the usual course, come to the authorities.

2. MATERIALITY OF FALSE STATEMENT.

A statement as to the absence of any suppressed facts by which the United States might be defrauded is material within a statute making criminal any false statement in a customs declaration as to any matter material thereto.

Herman A. Salen was indicted for perjury. On motions to quash the indictment.

[Denied.]

H. Snowden Marshall, United States attorney, of New York City (*Frank E. Carstarphen*, assistant United States attorney, of counsel), for the United States.

Erwin, Fried & Czaki, of New York City, for defendant.

HAND, *District Judge:* I shall consider only the second question raised, *i. e.*, whether it now appears that the indictment is defective in alleging that the defendant swore falsely in saying:

Nothing has been on my part, nor to my knowledge on the part of any other person, concealed or suppressed whereby the United States may be defrauded.

The clause must refer, I think, to information which, if known, would enable the United States to get larger duties than it would if the entry went through at the values fixed in the consular invoice. Knowledge of a suppressed invoice which in fact stated other values at the place of export, all would agree, would come within the clause. I can see no reason to limit the words to such an invoice; on the contrary, the fair meaning appears to me to include any document which, if known, would have led the United States to fix the duties at a higher figure. Of course, the United States must prove that the defendant knew that the document, if discovered, would have so resulted, and it may be hard to show that a document, designed only as the basis of sale values, would, if known, have resulted in such action by the United States. That, however, is not raised by this motion. The sole question here is whether the United States by any possibility could show that documents, like those here in question, would inevitably have set the authorities upon an inquiry which would have resulted in larger duties. If, as is suggested, it had appeared that there were, to the defendant's knowledge, continuous and parallel invoices setting out selling prices five times as great as the consular invoices, I should at once have regarded the consular invoices as fraudulent, had I been an appraiser. Were I a juror I should have no difficulty, I think, in concluding that any man who knew of such invoices knew very well that they would provoke such action by the appraiser, and that their suppression, therefore, would defraud the United States of duty otherwise collectible. At least, I should ask for a very full explanation.

However, it is asserted that Forms 3 and 4 show that the suppression must be in the entry or invoice. I am not prepared to assent to the proposition that, even if this were so and the case arose under either Form 3 or 4, it would not be a crime to swear

[1] Reported in 216 Fed., 4 0.

to the declaration with such knowledge as is here alleged, but it is not necessary to go so far, because the phrase in Forms 1 and 2 is purposely different. Under Forms 1 and 2 the declarant must swear that neither he nor any one else has suppressed anything. Obviously this includes also matters which could not be included in the invoice, and refers to information which would not naturally be in the invoice. To interpose the words "in such entry or invoice" into Forms 1 and 2 makes nonsense if only the declarant is to swear to it. Nor can I agree that the suppression must be of a document which would in usual course come to the authorities, as such invoices as these would not. If the declaration includes, as it does, matters extraneous to the invoice itself, it can not be limited to other documents which usually come to the authorities, because usually no other documents do come, and the entry is made upon the consular invoice. The general purpose indeed of the declaration clearly is to search the conscience of the declarant and to require him to state all that he knows which anyone is keeping from the authorities and which would result in higher duties. It would be narrow to seek to give it less than its natural scope. If a distinction is sought between failure to disclose and suppression or concealment, it is enough for this purpose to refer to the fact that the United States here asserts that the figures corresponded between consular invoices and these documents, but that the corre spondence was colorable and intended to deceive.

I am satisfied that the counts are sufficient on this point, and the motion is denied.

The objection to the indictment is that there is no allegation that the Goetz invoice was material to the "purposes of the declaration." This indictment falls within subsection 6, which makes criminal any false statement in the declaration "as to any matter material thereto." In common law prosecutions for perjury the indictment must allege that the perjurious statement is material to the inquiry, which may be done either by an allegation simply (Markham *v.* United States, 160 U. S. 325) or by pleading the setting from which the court may determine the materiality (Ammerman *v.* United States, 185 Fed., 1).

I understand the argument to be that, not only must the contents of the statement be material to the entry, but that the truth must be so likewise. It is, of course, scarcely possible that the contents of the statement should be relevant and the truth be irrelevant, but the case might be proved without showing any facts relevant to the entry, except in so far as the declarant's knowledge itself were relevant. For example, it might abundantly appear from the defendant's speech and conduct that his statement was false without its appearing what were the true facts to which his false statement referred, and this would be quite enough to convict him. In this district, at least, we never require the United States, in prosecutions for perjury, to commit itself to the truth about the subject of the statement, but allow it to allege merely that the statement was consciously false, and prove that fact in any way it can. United States *v.* Freed (179 Fed., 236). Many things might disprove the statement which would not prove the truth about its contents at all. Under this rule the United States need have said nothing at all about the Goetz invoice, or more than that the statement was consciously false. Other proof than the invoice no doubt will be produced upon the trial to show that Salen knew that its suppression might defraud the United States, but that need not be pleaded any more than the invoice need have been.

Coming, then, to the real question, that is, the materiality of the content of the statement, there can be no doubt that the absence of any suppressed facts by which the United States might be defrauded was material to the action of the authorities. It gave them added assurance of the truth of the invoice, and enabled them to assume that it was a complete statement of the truth. It may be urged that the phrase used in this statute puts it out of the usual rule relating to perjury, and imposes a further duty. I can not see the least reason for this; the "matter material" means, I think, the subject matter or contents of the statement, not the facts to which the statement refers. It is no more than a provision that the statement shall itself be material. I

do not mean that it can not be made grammatically to refer to both the statement and the true facts which the statement purported to cover, but one should interpret the law according to the custom in prosecutions for perjury, and not as though it created a new crime. Nor is there the least reason for compelling the United States in this case to expose its theory of the truth or its evidence upon the assignment of perjury, which does not apply in any other case.

The assignment of perjury is not formally laid till the last paragraph of the indictment. There it is alleged that the defendant made a willfully false statement. Ordinarily this would not be enough; the false statement must be expressly indicated. However, the foregoing allegations in the indictment make it perfectly clear what the statement is. Indeed, in view of the allegations regarding the Goetz invoice, though they are evidentiary in character and so argumentative, I might have held the assignment of perjury good without the last paragraph. It is not necessary to hold that, because the indictment as a whole leaves not the slightest doubt that the defendant is charged with a consciously false statement in respect of the absence of any suppression. It makes no difference just where the allegations occur; I am not disposed to chop logic where the intent is apparent.

Motion to quash denied.

TREASURY DEPARTMENT, *November 7, 1914.*

To collectors and other officers of the customs:

The appended decision of the District Court for the Southern District of New York is published for the information of officers of the customs.

(91373.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 34891.)

Forfeiture of tobacco invoiced as filler and found upon examination to be wrapper.

UNITED STATES *v.* FIVE BALES OF TOBACCO.

1. MANNER OF INVOICING TOBACCO.
   The regulations of the Secretary of the Treasury that tobacco containing the percentage of wrapper shall be invoiced as "mixed" held to be a reasonable regulation and to have all the force of law.

2. FALSE ENTRY.
   Tobacco invoiced as "filler" which was found to contain a substantial amount of "wrapper" held to be entered by means of a false invoice.

3. FRAUDULENT INTENT.
   It is necessary that there be circumstances indicating fraudulent intent to subject merchandise to forfeiture. United States *v.* Seventy-Five Bales of Tobacco (147 Fed., 127). The circumstance that tobacco invoiced as filler was found to contain a considerable percentage of wrapper and was invoiced at less than its true value *held* to be sufficient evidence of fraudulent intent to sustain a forfeiture.

HAND, *Judge:* This is a case for the forfeiture of five bales of tobacco which were entered at Tampa, afterwards withdrawn and entered at New York, and then seized for forfeiture by the authorities at this port. There are two grounds of forfeiture urged: First, that it was entered falsely as filler tobacco, when in truth it contained more than 15 per cent of wrapper with the filler tobacco; the second cause of forfeiture is that the valuations were incorrectly stated upon the invoices themselves.

Now, in each of these cases, of course, fraud must be alleged and proved, and it has been alleged. The question is whether it has been proved. The case of United States

v. Seventy-five Bales of Tobacco, as decided by the Circuit Court of Appeals of this circuit on June 20, 1906, and reported in 147 Fed., 127, settles the law on the subject, and it says that it is not different from any other forfeitures in that it is quasi criminal to the extent that the intent of the importer is a necessary element to the cause of action.

I will take up the first question, the first cause of forfeiture, first. That depends upon entering goods as filler when they were not filler. The actual character of these goods is in some dispute. The claimant here, who is undoubtedly most interested in these goods, insists that he went over them very carefully after their arrival in New York, and that he found that they were to all intents and purposes filler, and nothing but filler; he says there was hardly more than one in 50,000 leaves that would have answered for wrapper at all. Of course, if he is correct in that, the case stops there, because nothing could have been more proper than to label such tobacco as filler. But there have been two other examinations made by the official appraisers, the first one in Tampa and the second one here. In the examination in Tampa, it was shown with regard to these five bales that they varied from 10 to 14 per cent of wrapper. There was a regulation at that time promulgated by the Secretary of the Treasury, which I find to be reasonable, and which, therefore, being a reasonable regulation, has all the force of law, that where there is any wrapper contained it ought to be entered as "mixed." If the Tampa account is to be taken, quite clearly this tobacco was mislabeled; that is, entered under a wrong designation. That fact in itself would not be sufficient to forfeit the tobacco, but it would be a step in that direction, in that it would make the question then turn wholly upon the intent with which the entry was made.

There is in addition other evidence to the same effect in the count which was taken in New York. This showed that the five bales in question varied between 40 and 50 per cent in the amount of wrapper which was contained in them. Of course, any such amount as 40 or 50 per cent could not have got in without deliberation.

I do not think I can possibly reconcile the testimony of Manrera and Dresner on the idea that each has made an honest count and that the difference between them is merely a difference by accident. A difference of no wrapper whatever and 40 and 50 per cent wrapper could hardly arise through the chances of an examination. I do not say it is impossible, but the chance of such a possibility is so remote I think I can not safely make it the basis of a judicial decision, and as I am forced to choose, as between them, I choose in favor of the witness who is least interested. I do not mean by this that I necessarily find that there was exactly 40 to 50 per cent of the five bales in question which were wrapper. I can not neglect the fact that the count in Tampa showed a much smaller amount of wrapper, but I do think that I must disregard the count made by Manrera himself, or his testimony of that count here in New York, for it seems to me that it is impossible that his testimony should chance to be the truth, and at the same time the other two counts should not be the truth. I am compelled, therefore, to find that at least a substantial percentage of these bales consisted of wrapper. Therefore, I find that there was a false entry of this tobacco in Tampa, and the remaining question is whether it appears from the other proof that the false entry was made with a fraudulent intent.

As I have not decided finally that the New York count of Dresner was necessarily correct, I can not rely upon that alone to determine that the entry was with fraudulent intent. Of course, if I should accept that count, the case would end in favor of the Government, because it is inconceivable to suppose that 40 or 50 per cent of wrapper should merely have crept in by mistake. What light upon the element of intent does the evidence of price or value throw? Dresner swears that the value of wrapper tobacco at the time in question was between $150 and $200 a bale; that is, 40 or 50 per cent of wrapper. Both he and Kohn swore that pure filler, or substantially pure filler, never got above $80 a bale in bond in the port of New York. We have a

paper which Manrera gave to Kohn shortly after the tobacco came to New York, which contains certain figures and relates to the bales of tobacco here in question. Of the five bales, the values of four are set down, and in each case they are set down at a larger sum than the value which was put in the invoice. Strangely enough, the difference is about 25 per cent; that is to say, the values on the private invoice which Kohn received are about 25 per cent higher than those entered on the invoice as the cost value in Cuba. Kohn says that when he got the paper from Manrera he told him that that represented the cost prices. That should mean the necessary cost prices in Cuba to Manrera's shippers and agents. Manrera says that they represented what he ought to get here in New York. There are, in addition, upon this paper in the column to the right of the figures in question, another set of figures, and these figures were headed originally by the words in lead pencil, "selling price." In each case these figures are larger than the figures in the column to the left. The percentages of difference, however, are now wholly uniform. It averages between 40 and 50 per cent. Above the column which remains on this paper is written the word "actual," and then in the column which remained the words "selling price," which, together with the figures below, are partly erased. The natural inference to my mind, from this fact, is that Manrera was writing the prices which he expected to sell the goods at and that the prices which remained were the actual prices. I should be disposed to interpret the word "actual" as meaning cost. His explanation for it, however, is different from this. He says that the "actual" prices were the "actual selling prices" which Chavez must get, and that the selling prices that he laid down and afterwards rubbed out are prices which he hoped to get, the market being extremely high. I don't say that this explanation was entirely untenable, but in view of the other facts in the case, particularly in view of Manrera's testimony as to his own count, I shall not accept it. Added to this is the fact that from any point of view, if his count was correct and if the tobacco was wholly made up of filler, as wholly as he said it is, the values of either row of figures as appears on these invoices themselves would be entirely out of any measure. It is true, I am accepting the valuation given by Kohn and Dresner, but I do accept that valuation, especially the valuation of Kohn, on whose testimony I place particular reliance. This reliance I feel especially from the general appearance of the man and his long experience. His testimony also has weighed strongly with me when I considered what Manrera actually said and the difference between him and Kohn. The result is, therefore, that although I can not be at all certain as to what the percentage of wrapper was in these bales, I think there was a percentage high enough to give a very much greater value to the tobacco than any value which ought to have gone under the name of "filler," and I do not believe that the word "filler" was put in in the invoices merely by an honest mistake.

There is one element which makes in favor of the defendant, and that is that the values put in all but one of the invoices are much higher than would have been the values of any bales made up of filler only, which was a strange admission for the consignor to make if he was to insist that they were filler. That puzzled me from the outset, and I do not think Mr. Harper has made any explanation of it. The only explanation I can see is that the entries of prices upon the invoices were simply taken rather roughly at a reduction from the cost prices in Cuba, as shown in the private invoice. The parallelism of these prices is somewhat noticeable and suggests that they were made up roughly from cost prices, taking 20 per cent or thereabouts. I am also inclined to take these prices with the word "filler" and the discrepancies disclosed in the invoice as being a rather crude and awkward way of undervaluing—one by which, perhaps, they expected to accomplish their purpose, but about which they had not reflected enough.

Whatever may be said of this it does not seem to me to be sufficient to shake the validity of the conclusion which I have arrived at from the other proof, and which I think justified a verdict for the United States; even though, were it a criminal case,

and the proof required was beyond a reasonable doubt, the result might not be the same. I will therefore direct a verdict for the United States and the clerk will so direct the jury.

(T. D. 34892.)

Moving-picture films.

Films reimported claimed to be free as American goods returned.

TREASURY DEPARTMENT, *November 11, 1914.*

To collectors and other officers of the customs:

Recent investigations show that in many instances moving-picture films have been entered free of duty as of American origin when they were in fact manufactured abroad from negatives exported from the United States.

From statements made by leading film manufacturers in the United States it is learned that in most cases no positive prints are shipped abroad, the negatives only being shipped and the positives made in Europe. In cases where positive prints are shipped to Europe they are leased or sold with the understanding that the films are not to be resold or shipped back to the United States.

In view of the foregoing, you are instructed to examine carefully all moving-picture films claimed to be free of duty under paragraph 404 of the tariff act, and to refuse free entry in case of doubt, unless satisfactory evidence shall be produced as to the American origin of the films. In cases where films of foreign origin are fraudulently invoiced as of American manufacture, they will be released only upon payment of the home value thereof, plus the duty.

(67763.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 34893.)

Common carrier.

Rebonding of the Central Railroad Co. of New Jersey as a common carrier of dutiable merchandise and for the lading and unlading of bonded goods under the act of February 3, 1911.

TREASURY DEPARTMENT, *November 11, 1914.*

SIR: The department has received your letter of the 30th ultimo, with which was inclosed a bond of the Central Railroad Co. of New Jersey as a common carrier of dutiable merchandise and for the lading and unlading of bonded goods under the act of February 13, 1911, the said bond being in lieu of that of the company named approved January 30, 1908.

The bond is approved and one copy thereof inclosed herewith to be placed upon your files.

You should note the fact and date of the rebonding of the above-named company upon the copy of the bond approved January 30,

1908, now in your possession, and retain the same without cancellation to meet any liability which may have accrued thereunder.

Respectfully, ANDREW J. PETERS,
(13930.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34894.)

Drawback on bottled Fellows' Compound Syrup of Hypophosphites.

Drawback on bottled Fellows' Compound Syrup of Hypophosphites produced by the Fellows Medical Manufacturing Co., of New York, N. Y., with the use of imported metal capsules.

TREASURY DEPARTMENT, *November 12, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on bottled Fellows' Compound Syrup of Hypophosphites produced by the Fellows Medical Manufacturing Co., of New York, N. Y., with the use of imported metal capsules.

The allowance shall not exceed one imported metal capsule for each bottle of Fellows' Compound Syrup of Hypophosphites exported.

The sworn statement of the manufacturers, dated October 21, 1914, is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(102786.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34895.)

Drawback on automobiles and parts.

T. D. 34766 of September 24, 1914, extended to cover automobiles and automobile parts manufactured by the Pierce-Arrow Motor Car Co.

TREASURY DEPARTMENT, *November 11, 1914.*

SIR: The department's regulations of September 24, 1914 (T. D. 34766), providing for the payment of drawback on automobiles and automobile parts manufactured by the Studebaker Corporation, of Detroit, Mich., in whole or in part with the use of imported materials and parts and with the use of parts produced by domestic manufacturers in whole or in part from imported materials, are hereby extended to cover automobiles and automobile parts manufactured by the Pierce-Arrow Motor Car Co., of Buffalo, N. Y., in whole or in part with the use of imported materials and parts and with the use of parts produced by domestic manufacturers in whole or in part from imported materials and covered by drawback rates now existing or which shall be promulgated in the future, under the conditions set forth in the sworn statement of the said company dated October

22, 1914, transmitted herewith, and the sworn statements filed by domestic manufacturers in connection with drawback rates separately established.

Respectfully, ANDREW J. PETERS,
(101066-16.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Buffalo, N. Y.*

(T. D. 34896.)

Show cards.

Appeal directed from decision of the Board of United States General Appraisers of October 23, 1914, G. A. 7620 (T. D. 34860), involving the classification of show cards composed of surface-coated cardboard, with thin surface-coated paper pasted thereon.

TREASURY DEPARTMENT, *November 12, 1914.*

SIR: I am in receipt of your letter of the 27th ultimo, inviting attention to the decision of the Board of United States General Appraisers of the 23d ultimo, G. A. 7620 (T. D. 34860), wherein it is held that certain show cards composed of surface-coated cardboard, with thin surface-coated paper pasted thereon, which had been assessed with duty at the rate of 5 cents per pound and 30 per cent ad valorem under the provision in paragraph 411 of the tariff act of 1909 for articles composed in chief value of papers with coated surface or surfaces, were properly dutiable at the rate of 35 per cent ad valorem under the provision in paragraph 420 of the said act for manufactures of paper or of which paper is the component material of chief value.

In view of the importance of the issue, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, ANDREW J. PETERS,
(101832.) *Assistant Secretary.*
ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 34897.)

Balbuse gum.

So-called "balbuse gum," which has been washed, cleaned, and dried, and which contains elements which are not natural to the gum in its natural or crude state, dutiable as a nonenumerated manufactured article at the rate of 15 per cent ad valorem under paragraph 385 of the tariff act of October 3, 1913.

TREASURY DEPARTMENT, *November 12, 1914.*

SIR: I am in receipt of your letter of the 4th instant, transmitting a communication from the appraiser in regard to a proposed change in the classification of so-called "balbuse gum," similar to the sample submitted.

It appears that this merchandise is at present invoiced and classified as crude rubber free of duty under paragraph 513 of the tariff act, but that a recent investigation has disclosed the fact that the article is not rubber, but a gum which has been washed, cleaned, dried, and pressed into sheets for convenience in handling and transportation; that the article contains elements which are not natural to the gum in its natural or crude state, and that such elements must therefore have been added during a process of manufacture.

It further appears from the report of the United States chemist that the merchandise is composed of gum similar in physical characteristics to caoutchouc, of resin having the characteristics of shellac, of vegetable matter probably natural to the gum, and of mineral matter consisting partly of talc. In a subsequent report the chemist expresses the opinion that the resin and talc present in the sample are not natural to the gum in its original or crude state.

In view of the report of the chemist that the so-called "balbuse gum" contains material not natural to the crude gum, the department concurs in the view expressed by you that the article is properly dutiable as a nonenumerated manufactured article at the rate of 15 per cent ad valorem under paragraph 385 of the tariff act, and you are accordingly directed to assess duty at this rate upon this merchandise imported or withdrawn from warehouse after thirty days from the date hereof.

Respectfully, ANDREW J. PETERS,
(91822.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34898.)

Models of wearing apparel.

Duty to be collected on models of wearing apparel entered under bond for exportation when the cords and seals have been removed or tampered with.

TREASURY DEPARTMENT, *November 12, 1914.*

SIR: The department is in receipt of your report on an application for cancellation of a bond given pursuant to the provisions of subsection 4 of paragraph J of section 4 of the tariff act of October 3, 1913, for the exportation of certain model gowns imported by a manufacturer for use in his own establishment. You also ask for instructions relative to certain cases now pending in which the appraiser has reported that the seals or cords are missing or have been tampered with.

The application states that the cords and seals were removed by an employee who was ignorant of the purpose for which they were attached, and that the model is in the same condition as imported.

The purpose of the cords and seals is to insure the identity of the article offered for exportation with the one imported, and where

the cords and seals have been removed or tampered with they do not serve this purpose. The application is therefore denied, and you are instructed that in all such cases the duty should be assessed and collected or the bond forfeited.

Respectfully, ANDREW J. PETERS,
(91003.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34899.)

Neutrality.

Instructions supplementing those in T. D. 34693 and T. D. 34718 relative to the observance of neutrality. Cooperation of customs and revenue-cutter officers with naval officers required.

TREASURY DEPARTMENT, *November 14, 1914.*

To customs officers and officers of the Revenue-Cutter Service.

Referring to T. D. 34693 and T. D. 34718 of August 10 and 20, 1914, respectively, the Department desires the fullest possible cooperation between collectors of customs and the Revenue-Cutter Service and officers of the Navy in the enforcement of the laws and regulations relating to neutrality.

Officers of the Revenue-Cutter Service and of the Navy have been instructed to cooperate with customs officers and to confer with them and to render all possible assistance in the matter.

You will, therefore, freely confer with officers of the Revenue-Cutter Service and of the Navy in such matters and ask their advice and assistance when difficult questions arise requiring quick action. Suggestion as to conference or necessity of action may come from yourself or from one of such officers. The judgment of such officers should be sought on all questions which involve a knowledge of matters particularly within their training and experience. You will request their assistance in enforcing the neutrality laws and in securing any information requested by the Department. You will also cooperate with them and render them assistance in securing information desired by them.

(102574.) W. G. MCADOO,
Secretary of the Treasury.

(T. D. 34900.)

Importations of cattle, etc., from Canada.

The importation from Canada of cattle, sheep, other ruminants, or swine prohibited.

TREASURY DEPARTMENT, *November 16, 1914.*

To officers of the customs and others concerned:

The appended copy of amendment 2 to B. A. I Order 209, issued by the Department of Agriculture under the acts of August 30, 1890,

and February 2, 1903, prohibiting the importation from Canada of cattle, sheep, and other ruminants, or swine is published for the information and guidance of customs officers and others concerned.

(56910.) ANDREW J. PETERS, *Assistant Secretary.*

(Amendment 2 to B. A. I. Order 209.)

UNITED STATES DEPARTMENT OF AGRICULTURE,

BUREAU OF ANIMAL INDUSTRY.

AMENDMENT 2 TO B. A. I. ORDER 209, REGULATIONS FOR THE INSPECTION AND QUARANTINE OF HORSES, CATTLE, SHEEP, SWINE, AND OTHER ANIMALS IMPORTED INTO THE UNITED STATES.—PROHIBITING THE IMPORTATION FROM CANADA OF CATTLE, SHEEP, OTHER RUMINANTS, AND SWINE.

UNITED STATES DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY.

In order to prevent the introduction into the United States of the contagious communicable disease known as foot-and-mouth disease, it is hereby ordered, under the authority conferred by section 7 of the act of Congress approved August 30, 1890 (26 Stat., 414), and section 2 of the act of Congress approved February 2, 1903 (32 Stat., 791), that B. A. I. Order 209 (regulations for the inspection and quarantine of horses, cattle, sheep, swine, and other animals imported into the United States), as amended by amendment 1, dated September 16, 1914, be, and the same is hereby, further amended so as to prohibit the importation from the Dominion of Canada of cattle, sheep, other ruminants, and swine. On and after November 9, 1914, and until further notice, no cattle, sheep, other ruminants, or swine shall be admitted into the United States from the Dominion of Canada for any purpose whatever. The regulations contained in B. A. I. Order 209, dated April 29, 1914, are modified accordingly.

Done at Washington this 9th day of November, 1914.

Witness my hand and the seal of the Department of Agriculture.

[SEAL.] D. F. HOUSTON,
Secretary of Agriculture.

(T. D. 34901—G. A. 7628.)

Furniture covered with cotton velvet.

A sofa covered with and composed in chief value of cotton velvet, not being an article of such form or shape that it could have been "made or cut *from* cotton velvet," is dutiable at 45 per cent ad valorem as "manufactures of cotton" under paragraph 332, act of 1909, and not at 47½ per cent ad valorem as "manufactures or articles in any form * * * made or cut from plushes, velvets," etc., under paragraph 325.

United States General Appraisers, New York, November 12, 1914.

In the matter of protest 680376 of F. B. Vandegrift & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers.)

COOPER, *General Appraiser:* A sofa composed in chief value of cotton velvet was classified under paragraph 325, act of 1909, and duty was paid at the rate of 47½ per cent ad valorem. Paragraph 325 reads as follows:

Plushes, velvets, velveteens, corduroys, and all pile fabrics, cut or uncut, whether or not the pile covers the entire surface; any of the foregoing composed of cotton or

other vegetable fiber, except flax, not bleached, dyed, colored, stained, painted, or printed, 9 cents per square yard and 25 per centum ad valorem; if bleached, dyed, colored, stained, painted, or printed, 12 cents per square yard and 25 per centum ad valorem: * * * *Provided further*, That *manufactures or articles in any form, including such as are commonly known as bias dress facings or skirt bindings, made or cut from plushes, velvets, velveteens, corduroys, or other pile fabrics composed of cotton or other vegetable fiber*, shall be subject to the foregoing rates of duty and in addition thereto 10 per centum ad valorem: *Provided further*, That none of the articles or fabrics provided for in this paragraph shall pay a less rate of duty than 47½ per centum ad valorem.

Protestants claim that the article is dutiable as manufactures of cotton at the rate of 45 per cent ad valorem under paragraph 332 of said act. It is the contention of the importers that the sofa can not be properly classified under paragraph 325 for the reason that that paragraph imposes duty on the merchandise enumerated therein according to the number of square yards contained, and that, as the sofa, although in chief value of velvet, is also composed of wood, upholstery stuffing, etc., which commodities are not susceptible of square yard measurement, it is dutiable according to the component material of chief value.

Counsel for the Government relies upon the case of Buehne *v.* United States (159 Fed., 107; T. D. 28599), in which it was held that steel wool was dutiable according to the size of the wire from which it was shaved; but it is our opinion that that case is differentiated from the case at bar because the steel wool was made entirely from the wire, while here the sofa is not made entirely from velvet, but is in substantial quantities of wood, upholstery stuffing, and other commodities used in the manufacture of such furniture.

Although the duty has been levied upon the merchandise at an ad valorem rate, the provision in which such rate is enumerated refers back to the "articles or fabrics provided for in this paragraph." This sofa is an "article." The "articles" provided for in the paragraph are those only which are "made or cut from plushes, velvets," etc. Duty is imposed on such articles at 9 or 12 cents per square yard, and, in addition thereto, at 25 per cent plus 10 per cent ad valorem. A "square yard" is one of the units used in measuring surfaces. A sofa, in form, is a solid, and solids are measured in accordance with the cubic measure and not the square measure. Furthermore, a sofa is not "made from" or "cut from" velvet, for those words would seem to import that an article designated thereby must be made entirely from the materials specified in the paragraph. Such was the case in the steel wool decision, *supra*. A sofa receives its form and shape from the wooden frame and the upholstery stuffing or packing, although it may be composed in chief value of the material with which it is covered. The wood and stuffing are substantial and important parts in the article.

In G. A. 890 (T. D. 11977) velveteen dress facings were held dutiable as manufactures of cotton, and not as velveteen in the piece, for the reason that such merchandise was "cut bias into narrow strips of short lengths and the ends thereof lapped over and sewed together, thus rendering square yard measurement difficult, if not almost impossible." This decision was affirmed by the United States Circuit Court and the Circuit Court of Appeals. *In re* Kursheedt (49 Fed., 633; 54 Fed., 159). The tariff act in question in that case (1890) did not contain a provision for "manufactures or articles made or cut from velveteens," but that provision was added to the corresponding paragraph (315) of the subsequent tariff act (1897), with the words "including such as are commonly known as bias dress facings or skirt bindings," thus showing that it was the intention of Congress to impose duty on such goods according to the square yard measurement. Dress facings, however, are made wholly or substantially of velveteen, and they are of such a nature as to permit of square yard measurement. No other material is used in connection with the velveteen or other pile fabric to form bias dress facings and skirt bindings, and it is our opinion that Congress intended that all "manufactures or articles" dutiable under this paragraph should be those which are made entirely from the fabrics enumerated. This construction is amply supported by the use of the word "including," which is a word of extension and therefore brings into the paragraph the bias dress facings and skirt bindings, which evidently would not otherwise be covered thereby. For, if Congress had been satisfied that the dress facings and skirt bindings would have been provided for as "articles or manufactures made or cut from plushes," etc., it would not have inserted the words "including bias dress facings," etc., as those words would have been superfluous. The only construction which would give effect to all parts of the paragraph would be to hold that "manufactures or articles made or cut from plushes," etc., covers those articles only which are made entirely from the fabrics enumerated, but not advanced to such an extent as bias dress facings, and bias dress facings and skirt bindings are also dutiable at the same rate because they are specially enumerated. Therefore, as dress facings and skirt bindings are a little further advanced than the other commodities which are designated as "manufactures or articles" in the paragraph, a sofa, which is of an entirely different character and is much further advanced than dress facings and skirt bindings, certainly is not included in the class of merchandise intended to be covered by the provisions for "manufactures or articles made or cut from plushes," etc.

This is the construction originally adopted by the customs authorities, as it is noted that in G. A. 4582 (T. D. 21695) the board affirmed the decision of the collector who classified certain "spiders" and "spider webs" as "manufactures of cotton." These articles were

made of metal wire covered with cotton velvet, cotton chief value. That merchandise was imported under the act of 1897, which contained the same provision that we are now construing.

In Horstmann *v.* United States (121 Fed., 147), the court held that trimmings in ornamental scrollwork designs, stamped or cut by machine out of cotton velveteen fabrics, were dutiable as "manufactures or articles in any form made or cut from velveteen." In that case no other material was used in connection with the velveteen. In G. A. 5354 (T. D. 24496), however, trimmings, cut in the same way but having undergone a further finishing process on another and different machine by having a heavy silk cord sewed around the edges and a lace design sewed on the back of the same and showing through the open spaces in the velveteen, were held dutiable as cotton trimmings and not as "manufactures or articles in any form made or cut from velveteen." This latter decision is an authority in favor of the importer's contention in the case at bar, and under that ruling the sofa in question would not be dutiable as a manufacture or article made or cut from velvet. We hold that it is a manufacture of which cotton is the component material of chief value, and that it is properly dutiable at 45 per cent ad valorem under paragraph 332.

The protest is sustained.

(T. D. 34902—G. A. 7629.)

Reappraisement.

SECOND NOTICE OF ADVANCE GIVES NO NEW RIGHT OF APPEAL.

On entering goods at the customhouse the importer made certain additions to the invoice values, which were subsequently approved by the appraiser. One item on which the importer failed to make an addition was advanced by the appraiser to make foreign market value, and regular notice of the appraisement of the merchandise and of such advance was given by the collector to the importer. The importer thereupon filed an appeal to reappraisement on "all items advanced," and after due hearing had thereon the appraised value was affirmed by the general appraiser "on all items appealed on by the importer." On appeal to rereappraisement a board of three general appraisers modified that decision by sustaining the advance in part only. More than 30 days subsequent to this final decision a second notice similar to the first notice was sent to the importer by the collector, which notice was sent in compliance with instructions issued by the Treasury Department to collectors to notify importers of the appraiser's action when additions to invoice values have been made on entry under the provisions of paragraph I, section 3, tariff act of 1913. *Held*, that inasmuch as the importer had previously received notice of the appraisement, the sending of the second notice did not give him the right to file an appeal to reappraisement on the items on which he had made additions on entry, but which he had failed to include in his original appeal.

United States General Appraisers, New York, November 12, 1914.

In the matter of reappraisement 76247 of M. E. Mailhouse.

HOWELL, *General Appraiser:* This appeal to reappraisement reads as follows:

SIR: As I consider the appraisement made by the United States appraisers too high on all items advanced by me to meet appraisers additions imported in the *Rotte*

dam from Rotterdam, I have to request that the same may be reappraised by a general appraiser in accordance with law.

Respectfully, M. E. MAILHOUSE.

Hon. D. F. MALONE,
Collector of Customs.

The appeal is dated July 24, 1914, and relates to an importation by the steamship *Rotterdam*, entered at the port of New York November 19, 1913. A motion has been made by the Assistant Attorney General to dismiss the appeal on the ground that it was not filed within the statutory time allowed for the filing of such appeals. The facts in the case are as follows:

The goods were entered on a pro forma invoice November 19, 1913. On entering the goods the importer made certain additions to the values stated in the pro forma invoice, and in doing so addressed a letter to the collector of customs which reads as follows:

NEW YORK, N. Y., *November 18, 1913.*

Honorable COLLECTOR OF CUSTOMS,
Port of New York, N. Y.

SIR: Referring to the attached, please note that like merchandise is at present under reappraisement—

Entry No. ——,
Reappraisement No. ——,
Steamer ———,
Date of arrival, ———,

and on other shipments, and it is claimed on behalf of importer that the entered value of this invoice is in excess of the foreign market value of the merchandise covered thereby. It is claimed that duty should be assessed on the invoice value under the provisions of paragraph I, section 3, of the tariff act of October 3, 1913.

Yours, very truly, M. E. MAILHOUSE.

The pro forma invoice, with this letter and other memoranda attached showing the importer's additions, was forwarded to the appraiser for appraisement of the merchandise covered thereby, and that officer approved the entered values of all of the items save one. The one item the value of which he questioned was one to which the importer had made no addition on entry, and on this item the appraiser added about 7 per cent to the value stated in the pro forma invoice to make foreign market value. The invoice was thereupon returned to the collector, and under date of November 26, 1913, a notice of the appraisement and the advance by the appraiser was given to the importer, as provided in article 884 of the customs regulations of 1908. This notice has not been produced, but it appears from the testimony that it was given on the regular form for such notices, which is known as customs catalogue No. 4294a, and that it read as follows:

The merchandise entered by you per steamship *Rotterdam* has been appraised in accordance with law; the appraised value exceeds the entered value by 7 per cent. Appeal from this appraisement, if dissatisfied therewith, must be made within 10 days after the date of this notice. Section 28 (subsection 13), act of August 5, 1909.

Respectfully,

DUDLEY FIELD MALONE, *Collector.*

Within the statutory time from the receipt of this notice the importer filed an appeal to reappraisement, which was directed against "all items advanced." Said appeal was duly heard by me, and a decision was rendered affirming the appraised value "on all items appealed on by the importer." Thereupon the importer filed an appeal to rereappraisement, which was also directed against "all items advanced." This appeal was duly heard, and a board of three general appraisers rendered a decision June 23, 1914, modifying the decision of the general appraiser to the extent of sustaining the advance in part only. Neither of these decisions in any way affected the items to which the importer had made additions on entry, as the appeals did not embrace such items. Those items are now covered by the appeal here under consideration, and the importer claims that this appeal is timely inasmuch as it was filed on the same day that he received a second notice from the collector advising him of the appraisement of the merchandise involved in the importation. This second notice, which is on customs catalogue No. 4294a, has been made a part of the record and reads as follows:

UNITED STATES CUSTOMS SERVICE,
PORT OF NEW YORK,
Collector's Office, July 24, 1914.

SIR: The merchandise entered by you per steamship *Rotterdam* has been appraised in accordance with law; appeal from this appraisement, if dissatisfied therewith, must be made within 10 days after the date of this notice. Section 28 (subsection 13), act of August 5, 1909.

Respectfully,

DUDLEY FIELD MALONE, *Collector.*

M. E. MAILHOUSE, *117 East 24th Street.*

It appears from the testimony that this second notice was sent to the importer because of instructions issued by the Treasury Department to collectors of customs (T. D. 34363 and T. D. 34565) to notify importers of the appraiser's action in cases where additions have been made by the importers on entry under the provision in paragraph I of section 3 of the tariff act of 1913, which reads as follows:

The duty shall not, however, be assessed in any case upon an amount less than the entered value, unless by direction of the Secretary of the Treasury in cases in which the importer certifies at the time of entry that the entered value is higher than the foreign market value and that the goods are so entered in order to meet advances by the appraiser in similar cases then pending on appeal for reappraisement, and the importer's contention shall subsequently be sustained by a final decision on reappraisement, and it shall appear that the action of the importer on entry was taken in good faith, after due diligence and inquiry on his part, and the Secretary of the Treasury shall accompany his directions with a statement of his conclusions and his reasons therefor.

This provision giving the Secretary of the Treasury power to direct the assessment of duty on an amount less than the entered value is a new enactment appearing now for the first time in the history of

tariff legislation. Prior to this enactment duty could in no case be assessed upon an amount less than the entered value; and therefore if an importer made additions on entry and the appraiser passed the importation at the values as entered without making any further additions, there was no necessity of giving the importer notice of the appraiser's action. If, however, the appraiser advanced the value, the importer was entitled to notice in order that he might, if he so desired, avail himself of the right of appeal to reappraisement guaranteed to him by the statute. The Lace House *v.* United States (141 Fed., 869; T. D. 26970) and article 884 of the Customs Regulations, 1908.

Under this new provision in paragraph I it now becomes important for the importer who has made an addition on entry under that provision to receive notice when his merchandise has been appraised, irrespective of what the appraiser's action may be, inasmuch as the Secretary of the Treasury, who alone may direct the assessment of duty upon an amount less than the entered value, has held that an importer may only obtain the benefit of this provision in cases where an appeal for reappraisement has been filed and sustained (T. D. 34179). The Treasury Department has provided for such notices in the instructions to collectors above referred to (T. D. 34363 and T. D. 34565).

In this case the additions were made by the importer under the provisions of said paragraph I, and by this appeal it is sought to have the merchandise reappraised in accordance with decisions in other cases of similar merchandise, which decisions, while not authorities for sustaining the invoice values in this case, would, if followed here, somewhat reduce the entered values. In other words, the additions made by the importer on entry are greater than were required to bring the invoice values up to foreign market value as subsequently determined by this board. The importer is therefore seeking, under the provisions of said paragraph I, to have the duty assessed upon an amount less than the entered value, and by this appeal he seeks to bring himself within the ruling of the Secretary of the Treasury as announced in T. D. 34179, *supra*. But the motion of the Assistant Attorney General raises the question as to whether the importer has not lost his remedy by failing to take an appeal on these items on which he himself had made additions when he took his appeal after receiving the first notice of the appraisement of the merchandise. That part of paragraph M, section 3, tariff act of 1913, which provides the remedy for an importer who deems the appraisement of his merchandise too high, reads as follows:

* * * Or if the importer, owner, agent, or consignee of such merchandise shall deem the appraisement thereof too high, and shall have complied with the requirements of law with respect to the entry and appraisement of merchandise, he may within 10 days thereafter appeal for reappraisement by giving notice thereof to the collector in writing.

Under this statute he must take his appeal within 10 days; and in order that he may avail himself of his statutory right it has been held, as we have stated, that, where advances have been made by the appraiser, notice of such advances must be given to the importer. And in view of the construction placed by the Treasury Department upon the provisions of paragraph I, it is equally important that the importer should be notified of the appraisement of the merchandise in all cases where he has made additions on entry under this statute.

As was said in Barnard's case, G. A. 7615 (T. D. 34842), "the manifest purpose of advising the importer of the advance is to enable him to avail himself, if he so desires, of the right of appeal guaranteed to him by paragraph M, section 3, tariff act of 1913." In other words, the importer must be informed of the appraiser's action in order that he may not be denied his right of appeal. In this case he was so informed by the first notice sent to him by the collector, which stated that the merchandise had been appraised in accordance with law, and that the appraised value exceeded the entered value. Manifestly, if he desired to take an appeal to reappraisement on the ground that the entered values were "higher than the foreign market value," he was enabled to do so upon receipt of the notice that his merchandise had been appraised. Upon receipt of such notice he filed an appeal to reappraisement, but did not include therein the items on which he had made additions on entry. His laches in this respect can not be attributed to the failure of the collector to give him notice of the appraiser's action. Such notice was duly given to him, as we have seen, and he appealed to reappraisement and rereappraisement. The second notice sent to him by the collector some 30 days after the final decision on his appeal to rereappraisement is substantially a duplicate of the first notice, the only change being the omission therefrom of the statement of percentage of advance made by the appraiser. This second notice can not, in my opinion, give the importer a new right of appeal.

My conclusion is that the appeal was not filed within the statutory time, and it is accordingly dismissed.

(T. D. 34903—G. A. 7630.)

Cotton table damask.

1. Specific Provision.

Cotton table damask and articles made from cotton table damask, being more specifically provided for as "cotton table damask, and manufactures of cotton table damask, or of which cotton table damask is the component material of chief value" than as "all other Jacquard figured manufactures of cotton or of which cotton is the component material of chief value" are dutiable at 25 per cent ad valorem under paragraph 263, act of 1913, rather than at 30 per cent ad valorem under paragraph 258.

2. ADMINISTRATIVE AND JUDICIAL CONSTRUCTION.

It is a well-established rule that where statutory language has been given a long-continued administrative and judicial construction, and there is a reenactment of the statute in substantially the same language, it is presumed that the administrative and judicial construction was adopted.

United States General Appraisers, New York, November 12, 1914.

In the matter of protest 750345 of M. Bauer, against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

COOPER, *General Appraiser:* The merchandise covered by this protest is cotton table damask and cotton damask table covers, all woven on the Jacquard loom. It was returned for duty at the rate of 30 per cent ad valorem under paragraph 258 of the tariff act of 1913. It is claimed that said merchandise is dutiable at the rate of 25 per cent ad valorem under paragraph 263. The provisions in question are as follows:

258. * * * All other Jacquard figured manufactures of cotton or of which cotton is the component material of chief value.

263. Cotton table damask, and manufactures of cotton table damask, or of which cotton table damask is the component material of chief value, not specially provided for in this section.

Some testimony was introduced on the part of the Government tending to show that there is a class of cotton table damask manufactured in this country on the dobby looms, but it is evident that the great majority of that imported is manufactured on the Jacquard looms. The sole question for decision is, which of the two provisions is the more specific and more aptly describes the merchandise before us? The construction to be placed on the above quoted provisions of paragraph 258 was discussed in G. A. 7609 (T. D. 34819) and G. A. 7618 (T. D. 34858), and we there held that the clause was indefinite and ambiguous and did not as specifically cover the goods there in question as the provisions for "cotton towels" and "cotton cloth * * * woven figured."

The case now before us presents stronger arguments and reasons in support of the importer's contention than the cases previously decided, for the provision for cotton towels, like the provision for Jacquard figured manufactures of cotton, is a new provision in the tariff act of 1913, while the provision for cotton table damask has been incorporated in the tariff laws since 1883. The language in paragraph 263 of the present act is identical with that in paragraph 831 of the act of 1909. To hold that Congress intended to change the established classification of cotton table damask by the introduction of an indefinite, ambiguous new provision, while retaining the identical provision for cotton table damask used in the previous act, is to violate one of the most important and fundamental principles of tariff construction.

Merchandise of the character of that here in question has for many years been classified by customs officers as cotton table damask, and this practice has been upheld by the board and the courts. See G. A. 5558 (T. D. 24944), Dunham *v.* United States (150 Fed. 562; T. D. 27805), Wilson *v.* United States (146 Fed., 64; T. D. 27092). It is a well established rule that where statutory language has been given a long-continued administrative and judicial construction and there is a reenactment of the provisions in substantially the same language, it is presumed that the administrative and judicial construction was approved and adopted. In support of this view, counsel for the importer cites the case of United States *v.* Wertheimer (2 Ct. Cust. Appls., 515; T. D. 32249), wherein the court had under consideration the proper classification of so-called chiffon bands, which for years had been classified as manufactures of silk. The Government there contended that, because of certain minor changes of wording in the provision for silk piece goods in the tariff act of 1909, the established classification should be changed and the merchandise classified as silk fabrics. The court in sustaining the importer's contention said:

> It is well also to recall that such goods were all the time well-known articles of commerce and that their classification had been distinctly fixed by the reported decision of the Circuit Court in the above-cited case. It may properly be assumed, therefore, that if Congress had designed to change that classification its purpose would hardly have been intrusted to mere remote analogies. * * * In general, it must be conceded that a settled rule of construction according to which such well-known importations as these have been for years classified becomes adopted by the trade as a basis for commercial transactions and should not be altered unless in conformity with a clear expression of the legislative will.

We do not think that there is such a "clear expression of the legislative will" in the act of 1913 as to authorize a change in the classification of cotton table damask and, in conformity with our views expressed in G. A. 7609 and G. A. 7618, *supra*, we hold that the term "cotton table damask" is more specific than the term "all other Jacquard figured manufactures of cotton." Accordingly, the merchandise is properly dutiable at 25 per cent ad valorem under paragraph 263 of said act.

The protest is sustained.

(T. D. 34904—G. A. 7631.)

Tissue paper—Wrapping paper.

Tissue paper, which is also a wrapping paper, is more specifically provided for *eo nomine* in paragraph 323 of the act of 1913 than under the general provision for wrapping paper not specially provided for in paragraph 328 of said act.

United States General Appraisers, New York, November 12, 1914.

In the matter of protests 734399, etc., of Dennison Manufacturing Co. *et al.* against the assessment of duty by the collector of customs at the port of Boston.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

FISCHER, *General Appraiser:* The merchandise in question was invoiced as tissue paper and was assessed with duty accordingly under

the *eo nomine* provision therefor in paragraph 323 of the act of 1913. It is claimed to be properly dutiable at 25 per cent ad valorem under paragraph 328 of said act as wrapping paper not specially provided for.

It appears from the proof offered that the particular kind of tissue paper here under consideration is known to the trade as "grass bleached tissue," that as such it was imported during the past 30 years by the Dennison Manufacturing Co., to be sold by them as a wrapping paper to manufacturers of articles composed of gold or silver, for which purpose it has been found to be peculiarly suitable in that it is nontarnishable and also prevents outside gases from reaching the articles contained therein. It is also shown by the proof that a very large, if not the chief, use of the tissue paper is for wrapping purposes.

Tissue paper is defined by the Standard Dictionary as—

N. Very thin, unsized, almost transparent paper for wrapping delicate articles, protecting engravings, etc.; so called originally not from its texture, but from its use in separating the folds of fine silk tissue.

This definition agrees with the ordinary understanding of the term. In fact, it is a matter of common knowledge that tissue paper is principally used for wrapping purposes.

In the matter of the protest of Charles Cooper & Co., decided by this board in G. A. 6017 (T. D. 26287), it was held that the provision for tissue paper applies to that variety of paper irrespective of its use. In that case it appears that the importers contended that the particular article there in question was not dutiable as tissue paper because it was not used as a wrapping paper.

However, there is apparently no dispute here as to the facts, it being conclusively shown that the merchandise is at once a tissue paper and a wrapping paper. The only issue here presented then is one of law, and it involves the question whether the merchandise is more specifically provided for as tissue paper under said paragraph 323 than as wrapping paper not specially provided for in said paragraph 328.

Conceding, therefore, that the tissue paper in question is likewise a wrapping paper, it is nevertheless equally true that as such it belongs to a certain definite and distinct class of wrapping papers well known and recognized in trade and commerce under the name of tissue papers.

In enacting said paragraph 323 it is clearly evident that Congress intended to make special provision for all tissue papers without exception, for it will be observed that the meaning of said provision is not limited or modified in any way. On the contrary, we find that the provision for wrapping papers in paragraph 328 is clearly confined to such wrapping papers as are not specially provided for elsewhere in the tariff. It will thus be readily seen that the former provision,

paragraph 323, is the narrower and more specific, and hence the correct dutiable classification of the paper in question.

Even though it were conclusively shown—which it is not—that each of said provisions specifically and accurately covered the paper in question, it would nevertheless be dutiable as tissue paper, in view of the provision in paragraph 386 of said act, which provides that "if two or more rates of duty shall be applicable to any imported article, it shall pay duty at the highest of such rates."

The protests are overruled and the decisions of the collector affirmed.

The claim for a 5 per cent discount on the duties collected, alleged in protest 763959, being wholly unsupported, is overruled. Note G. A. 7540 (T. D. 34246).

(T. D. 34905—G. A. 7632.)

Plaster of Paris casts of sculpture—Models.

Plaster of Paris casts of sculpture, imported for use as models from which mold reproductions, are models within the meaning of paragraph 611, tariff act of 1913, granting free entry to "statuary and casts of sculpture for use as models or for art educational purposes only."

United States General Appraisers, New York, November 13, 1914.

In the matter of protests 735076, etc., of Fredk. H. Griffin against the assessment of duty by the collector of customs at the port of Boston.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers; SOMERVILLE, G. A., not participating).

WAITE, *General Appraiser:* These importations consist of casts of sculpture made of plaster of Paris. They were assessed as manufactures of plaster of Paris under paragraph 369, tariff act of 1913. They are claimed to be free of duty under that part of paragraph 611 which provides for "statuary and casts of sculpture for use as models or for art educational purposes only."

Free admission under paragraph 611 depends upon compliance with regulations promulgated by the Secretary of the Treasury. We are unable to find that any regulations covering this paragraph have been promulgated since the act of 1913 was passed. However, under date of October 3, 1913, the Secretary of the Treasury issued an order (T. D. 33768) extending, so far as applicable, the regulations in force under the law of 1909 to importations made under the act of 1913. So far as such regulations have reference to this paragraph, we are of the opinion that they have been complied with. (Note T. D. 29995.)

Some testimony has been taken, P. P. Caproni, of the firm of P. P. Caproni & Bros., the importers, testifying that these importations were used in the process of reproducing other casts and statues from plaster for educational purposes. There was received in evidence a

catalogue of the Caproni casts, from which we learn that they are sold to schools for decorations and as subjects for drawing and modeling classes.

In our opinion the statues and casts produced as above set forth would be entirely within the spirit and letter of the statute, the object of which is so well expressed by J. Remsen Bishop, principal of the Detroit High School, Michigan, in acknowledging receipt of some slabs of the Elgin marbles produced by these importers. He says:

> To my thinking, one of the most important influences that we can bring to bear upon the pupils of a high school is that of first-rate reproductions of noble w rks o fart.

The method pursued by the importers in the reproduction of these casts and statues, which reproductions are furnished to educational institutions, is to use the imported article as a model to form the mold from which the casts are produced. The only question in this case is whether this method of using the imported article is within the letter of the law. We are satisfied it is within the spirit. We do not find anything in the law which in any way restricts the user of a model imported under paragraph 611, so long as it is in fact used as a model. His methods of procedure and use may not be artistic or those of an artist. If the imported casts were used by an artist in his production of a copy from plastic material, or if set up in the studio of a sculptor and used as a model from which to reproduce in marble with chisel and mallet another piece of statuary, there could be no question but that such use would bring the casts within the provision of paragraph 611 in question. In our judgment, the use of models can not be restricted to artists who work in plastic material and stone, but should be allowed to those who work in metal in the usual way. And if these casts were used by one who worked in metal, either by the usual casting method or by what is known as the *cire perdue* process, they would be used in the same way in which the importers in this case used the imported casts. An inspection of photographs of the imported articles leads us to conclude that they are worthy of the use to which it is claimed they are put. Among them we find reproductions, which appear to be genuine works of art, of Mars Ludovisi, the original of which is in Florence; the Esquiline Venus in Rome; Giuliano and Lorenzo de Medici, by Michael Angelo, in Florence, as well as busts of Tennyson and Dickens.

The question as to whether these casts should be considered "casts of sculpture for use as models, or for art educational purposes only," is not without difficulty. Following the rule, however, that where there is doubt with reference to the construction of a statute the doubt should be resolved in favor of the importer, we conclude to sustain the protests, holding the articles to be free under the first part of paragraph 611.

(T. D. 34906—G. A. 7633.)

Soluble or chemically treated starch.

Potato starch which has been chemically treated so that it is in part soluble in hot water, and which is known as soluble starch, although a portion of it is insoluble, is dutiable under the provision in paragraph 36, tariff act of 1913, for "soluble or chemically treated starch," and not under paragraph 234 as "starch made from potatoes."

United States General Appraisers, New York, November, 13, 1914.

In the matter of protest 730533 of Stein, Hirsh & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers; SOMERVILLE, G. A., not participating.)

WAITE, *General Appraiser:* The commodity in question is variously invoiced as "kartoffelstarke," potato flour, and soluble potato starch. It is conceded to be made from potatoes. It was assessed at 1 cent per pound under the first provision of paragraph 234, tariff act of 1913. That paragraph reads as follows:

234. Starch, made from potatoes, 1 cent per pound; all other starch, including all preparations, from whatever substance produced, fit for use as starch, one-half cent per pound.

It is claimed by the importers to be dutiable under the last part of paragraph 234 at one-half of 1 cent per pound, or under the final provision of paragraph 36 at three-fourths of 1 cent per pound. The provision last referred to reads as follows:

36. * * * Dextrine, not otherwise provided for, burnt starch or British gum, dextrine substitutes, and soluble or chemically treated starch, three-fourths of 1 cent per pound.

Testimony was taken in this case, from which it appears that the product is made from potatoes, and is soluble in part in cold water; a greater part of it, however, is soluble in hot water. The testimony is that the experiments performed by the importers were by subjecting the substance to a temperature of 160°. It is admitted, however, that the whole of it is not soluble.

According to the testimony, it is used exclusively by manufacturers of cotton cloth as a sizing or starch, while starch not soluble made from potatoes is most commonly used as a food product, although sometimes used as a sizing in the textile trade.

It being observed that paragraph 234 provides for two classes of starch, to wit, starch made from potatoes and starch made from other substances, it follows that if this starch, made from potatoes, is dutiable under paragraph 234 at all, it must be under the first part of the paragraph, hence we conclude it is not dutiable at one-half of 1 cent per pound as provided in the last part of the paragraph.

The only question then remaining is whether the provision in paragraph 36 for "soluble or chemically treated starch" is more specific than the provision in paragraph 234 for "starch made from potatoes."

An analysis made by the Government chemist corroborates the statement made by the importer's witness that this starch has been treated by an acid. The chemist's report states:

This is potato starch that has been chemically treated with sulphurous acid. It is mainly insoluble, but contains some soluble starch.

Note the language of the report, which is that it is "starch that has been chemically treated with sulphurous acid." If the collector's classification is allowed to stand, it will be on the theory that in order to fulfill the requirements for chemically treated starch, the starch must be so treated that *all* the granules of the starch shall be broken down and the whole quantity be made soluble. It is evident that the commodity has been treated as a whole. Either the chemical was not of sufficient strength to attack the walls of all the starch granules or was not in sufficient quantity to do so.

We are of the opinion that enough has been done to this starch in the way of chemical treatment to warrant its classification under paragraph 36. The testimony of the importers is that it has been known for a number of years and handled and treated as soluble starch, notwithstanding the fact that it is not all soluble. We conclude it has been chemically treated, and is therefore dutiable at three-fourths of 1 per cent per pound under paragraph 36.

The protest is sustained to this extent.

A further claim is made in the protest that a discount of 5 per cent from duties should be allowed by virtue of the provisions of subsection 7 of paragraph J of section 4, act of 1913. This claim is overruled as unsupported, no reference having been made to it at the trial of the case.

(T. D. 34907—G. A. 7634.)

Colored catgut.

Catgut used in making or binding tennis rackets, which has been colored during the processes of preparation but has not been changed in form, use, or name by such coloring, is still catgut, and not a manufacture thereof, and is entitled to free entry under paragraph 529 of the tariff act of 1909.—G. A. 5800 (T. D. 25630), Abstract 7780 (T. D. 26655), Kreshower *v.* United States (152 Fed., 485; T. D. 27826), G. A. 5887 (T. D. 25940), Abstract 35422 (T. D. 34416), Hartranft *v.* Wiegmann (121 U. S., 609) cited.

United States General Appraisers, New York, November 14, 1914.

In the matter of protests 707638, etc., of American Express Company *et al.* against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers).

McClelland, *General Appraiser:* The merchandise which is the subject of protest 707638 consists of two items of catgut described

as "19 red/15" and "red Z." The appraiser returned both items as "colored tennis lacings—catgut manufactured," and the collector assessed them with duty at the rate of 25 per cent ad valorem under the provisions of paragraph 462 of the tariff act of 1909 as manufactures of catgut. Free entry is claimed under paragraph 529 of the same act. These two paragraphs are as follows:

462. Manufactures of amber, asbestos, bladders, catgut or whip gut or worm gut, or wax, or of which these substances or any of them is the component material of chief value, not specially provided for in this section, twenty-five per centum ad valorem; woven fabrics composed wholly or in chief value of asbestos, forty per centum ad valorem.

529. Catgut, whip gut, or worm gut, unmanufactured.

The record shows that catgut similar in every respect except color has been passed free of duty for a number of years, and that upon the same invoice with this colored catgut there are three items of uncolored or natural catgut, each of which was returned by the appraiser with advisory classification "free" and classified as free by the collector. The question here is thus simply whether, by reason of the injection of color into this catgut during the manufacturing processes, it ceases to be the catgut of commerce and becomes a manufacture of catgut, or even catgut manufactured.

It is notable that paragraph 529 provides for catgut unmanufactured, and that there is no provision in that or any other paragraph of the tariff act for catgut manufactured. If we assume that this article is catgut *manufactured*, it is nevertheless catgut and not a manufacture of catgut. To be a manufacture of catgut it must have ceased to be catgut and become something else, made in whole or in chief value of catgut, as for instance, a tennis racket.

It has been repeatedly held by the board that cycas palm leaves which were preserved in their natural form and appearance by being chemically treated were not manufactures of palm leaf (G. A. 5800; T. D. 25630 and Abstract 7780, T. D. 26655), and this view was upheld in Kreshower *v.* United States (152 Fed., 485; T. D. 27826).

The board, in January, 1905, decided that white or natural tennis catgut, similar to illustrative Exhibit A, was the catgut of commerce (G. A. 5887; T. D. 25940) and therefore entitled to free entry. Since that time the collector has uniformly classified such catgut as free. See also Abstract 35422 (T. D. 34416).

In Hartranft *v.* Wiegmann (121 U. S., 609) it was held that—

The application of labor to an article, either by hand or by mechanism, does not make the article necessarily a manufactured article within the meaning of that term as used in the tariff laws. Washing and scouring wool does not make the resulting wool a manufacture of wool. Cleaning and ginning cotton does not make the resulting cotton a manufacture of cotton.

It appears from the record that the color is introduced into this catgut during the processes of manufacture, and that the only difference in the finished articles between illustrative Exhibit A (the white gut) and Exhibit 1 (the colored gut) is the color. Each of them is used in the making or binding of tennis rackets. The mere introduction of color has not changed its form, use, or name. It is still catgut.

Protests 710636, 710637, and 717900, covering identical merchandise, are submitted on the record herein. Each of the protest claims for free entry is sustained, and reliquidations will follow accordingly

---

(T. D. 34908.)

Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, Somerville, and Hay.

BEFORE BOARD 1, NOVEMBER 10, 1914.

No. 36837.—ARTIFICIAL FLOWERS.—Protests 364426, etc., of F. Blumenthal & Co. et al. (New York). Opinion by McClelland, G. A.

Protests overruled as to artificial flowers classified under paragraph 425, tariff act of 1897.

No. 36838.—ARTIFICIAL FLOWERS.—Protests 348509-28616, etc., of Downing, Judae & Co. (Chicago). Opinion by McClelland, G. A.

On the authority of United States *v.* Edson (5 Ct. Cust. Appls., —; T. D. 34128) artificial flowers in part of wire were held dutiable under paragraph 193, tariff act of 1897.

No. 36839.—RUSCUS LEAVES.—Protest 749797-51370 of International Forwarding Co. (Chicago). Opinion by McClelland, G. A.

Protest overruled as to ruscus leaves chemically bleached, classified under paragraph 347, tariff act of 1913. Abstract 34789 (T. D. 34201) followed.

No. 36840.—OLIVE OIL IN TINS.—Protests 623972, etc., of Mediterranean Express Co. et al. (New York). Opinion by McClelland, G. A.

On the authority of United States *v.* Moos (5 Ct. Cust. Appls., —; T. D. 34528) certain olive oil in tins was held properly classified at 50 cents per gallon under paragraph 38, tariff act of 1909.

No. 36841.—GUT CABLE.—Protest 563169-40318 of G. W. Sheldon & Co. (Chicago). Opinion by McClelland, G. A.

Merchandise classified as a manufacture of gut under paragraph 462, tariff act of 1909, was claimed entitled to free entry as catgut, unmanufactured (par. 529). Protest overruled.

No. 36842.—EMBROIDERED LEATHER GLOVES.—Protests 53651f, etc., of Remy, Schmidt & Pleissner (New York), protest 752175 of John Wanamaker (Philadelphia), and protests 662921, etc., of B. Blumenthal & Co. et al. (San Francisco). Opinions by McClelland, G. A.

Wertheimer *v.* United States (4 Ct. Cust. Appls., 338; T. D. 33528) followed as to embroidered leather gloves. Protests sustained in part.

No. 36843.—IMITATION PEARLS ON WIRE.—Protests 451374, etc., of J. Mamluck & Co. et al. (New York). Opinion by Sullivan, G. A.

Imitation pearls on wire were held dutiable as imitation precious stones under paragraph 449, tariff act of 1909, as claimed. Protests sustained in part.

No. 36844.—IMITATION PEARL BEADS.—Protests 423247, etc., of F. W. Gertzen Co. et al. (New York). Opinion by Sullivan, G. A.

Imitation pearl beads classified under paragraph 421, tariff act of 1909, were claimed dutiable as imitation precious stones (par. 449). Protests overruled. Lorsch *v.* United States (5 Ct. Cust. Appls., —; T. D. 34132) followed.

No. 36845.—JEWELRY.—Protests 518184, etc., of Cohn & Rosenberger and protests 560090, etc., of the Lichtenstein Millinery Co. et al. (New York). Opinions by Sullivan, G. A.

Cohn *v.* United States (4 Ct. Cust. Appls., 378; T. D. 33536) followed as to merchandise commonly known as jewelry. Protests sustained in part.

No. 36846.—FISH IN TINS—SARDINES.—Protests 733483, etc., of Githens, Rexsamer Co. (Philadelphia). Opinion by Brown, G. A.

Sardines in oil were held properly classified under the first provisions of paragraph 270, tariff act of 1909. Sardines in tomato were held dutiable as herrings (par. 272).

BEFORE BOARD 2, NOVEMBER 10, 1914.

No. 36847.—STEEL WINDOW SASHES AND FRAMES.—Protests 734774, etc., of J. R. Livermore et al. (New York). Opinion by Fischer, G. A.

Complete steel window sashes and frames classified as manufactures of metal under paragraph 167, tariff act of 1913, were held dutiable as sashes and frames of steel (par. 104), on the authority of G. A. 7591 (T. D. 34675).

BEFORE BOARD 3, NOVEMBER 10, 1914.

No. 36848.—BUTTON BLANKS—IMITATION PRECIOUS STONES.—Protest 727419 of R. F. Lang (New York).

WAITE, *General Appraiser:* The importation in this case consists of small shapes of celluloid of various colors, rounded and smoothed upon one side and slightly flattened on the other, with a hole in the flattened side. The colors represented by the samples are red, blue, green, white, and perhaps some other shades or colors. Duty was assessed upon these goods under paragraph 427, tariff act of 1909, as button blanks. A number of claims are made by the importer in his protest, but one of which was insisted on at the hearing; that is, that the commodity should pay duty as imitation precious stones under paragraph 449.

The testimony indicates that these articles were intended for use as parts of jewelry, to be fastened to rings, ear ornaments, etc. They could, without doubt, be used as buttons by finishing them with a metal shank and eye. We are not disposed, however, to discuss the question as to whether they are really button blanks. The only question in which we are interested is the one raised by the claim of the importers, namely, are they imitation precious stones? It is true, they are doubtless intended to represent in color various stones, without much success, however.

The board and the courts have had under consideration merchandise which has been termed and classified as imitation precious stones, but have not seemed to formulate any rule governing the question as to what constitutes imitations of precious stones. If these celluloid pieces can be said to be articles in imitation of precious stones within the meaning of the statutes, then, in our judgment, papier-mâché or even wood or

clay or any such substance could be so used by simply coloring them to represent in color some particular stone. We are not prepared to say that a precious stone is imitated within the meaning of the statute simply by reproducing the color. We do not think, therefore, upon the record in this case we are warranted in sustaining the claim of the importer that this merchandise should be classified as imitation precious stones.

The protest is overruled.

No. 36849.—Rhododendrons—Evergreen Seedlings—Mixture of Goods.—Protest 730529 of P. Ouwerkerk (New York).

Waite, *General Appraiser:* The importation in this case consists of 165 cases of plants and shrubs, 19 of which are invoiced as *Rhododendron pontica.* Question here arises over these rhododendrons. They were assessed under paragraph 264, tariff act of 1909, at 25 per cent ad valorem as nursery stock. The importer claims they should have been admitted free under paragraph 668 as evergreen seedlings.

No testimony was taken, either upon the part of the importer or the Government, and now the importer asks in his brief that a finding be made in his favor as to a certain percentage of these goods, on the report of the appraiser, which was to the effect that between 60 and 70 per cent of the goods were produced by grafting, from which the importer assumes that 30 per cent were not grafted, and hence would be seedlings and therefore free.

We think there is no question but that a separation of goods may be made so as to make each variety bear the rate of duty provided by the statute. We are not disposed, however, to make a finding upon the report of the appraiser in this case. In the first place, he examined only 1 bale out of the 19; he does not appear to have reported the amount of grafted stock for the purpose of having it accepted as a basis for the separation of the goods, but merely to justify his action in assessing the importation as an entirety, assuming evidently that where goods of different kinds are mingled on entry, he had a right to assess all at the highest rate applicable to any of them. Hence we are not disposed to accept this report in the place of proof which should have been furnished by the importer. In other words, the presumption prevails that the finding of the collector is right. There is nothing in the case, in our judgment, to overcome that presumption. The importer makes the claim in his protest that all the goods are free, and then without a struggle expresses himself willing to accept free entry upon 30 per cent of them. If he expected a favorable finding in this case, he should have shown in some way his good faith and furnished some proof to justify his action in entering all these goods as free, which is now open to criticism. We are not disposed to disturb the finding of the collector. The protest is therefore overruled.

No. 36850.—Drawings.—Protest 756071 of R. Tuck & Sons Co. (New York). Opinion by Waite, G. A.

A drawing claimed to be an original design for a theater by an American artist, classified as drawings under paragraph 376, tariff act of 1913, was claimed to be entitled to free entry under paragraph 404. Protest overuled, the regulations not having been complied with.

No. 36851.—Desi Gram—Lentils—Pease.—Protest 740127 of S. L. Jones & Co. (San Francisco). Opinion by Waite, G. A.

Desi gram imported from Calcutta, classified as lentils under paragraph 197, tariff act of 1913, was held dutiable as pease (par. 209), as claimed.

No. 36852.—Horse.—Protest 736114 of Nacozari Railroad Co. (Nogales). Opinion by Waite, G. A.

A horse classified under paragraph 227, tariff act of 1909, was claimed entitled to free entry as a thoroughbred for breeding purposes. Protest overruled, the regulations ot having been comp lied with.

No. 36853.—Artistic Antiquities.—Protest 729523 of J. T. W. Marshall (Philadelphia). Opinion by Waite, G. A.

Certain articles were held entitled to free entry as artistic antiquities under paragraph 717, tariff act of 1909.

No. 36854.—Wood Pulp and Paper.—Protests 694349, etc., of O. M. Steinman et al. (New York). Opinion by Hay, G. A.

Paper manufactured from wood pulp in Sweden was held entitled to free entry on authority of American Express Co. *v.* United States (4 Ct. Cust. Appls., 146; T. D. 33434).

Before Board 1, November 12, 1914.

No. 36855.—Strings for Musical Instruments.—Protests 572014, etc., of Carl Fischer et al. (New York). Opinion by McClelland, G. A.

Protests overruled as to catgut strings ready for use on musical instruments classified under paragraph 467, tariff act of 1909. Richard *v.* United States (3 Ct. Cust. Appls., 306; T. D. 32587) followed.

No. 36856.—Fish in Tins—Sufficiency of Protest.—Protests 562786, etc., of F. Wm. Gertzen Co. (New York).

Brown, *General Appraiser:* These protests were submitted on the following stipulation:

It is stipulated and agreed that the merchandise covered by these protests consists of herrings in tomato sauce and kippered herrings of the same dutiable character as the herrings in tomato sauce the subject of decision in United States *v.* Smith & Nessle (T. D. 33312), and kippered herrings in United States *v.* Rosenstein (T. D. 31357).

It is further stipulated and agreed that these protests were authorized, but signed through clerical error with the name of the customhouse brokers.

Following said stipulation and the authorities cited therein, it is clear that the merchandise is dutiable as herrings, pickled or salted, smoked or kippered, at one-half of 1 cent per pound under paragraph 272, act of 1909, and the protests should be sustained if they are legally sufficient.

It is further stipulated and agreed that these protests were authorized, but signed through clerical error with the name of the customhouse brokers.

It therefore plainly appears that these protests are really the protests of Smith & Nessle Co., the importers; that they were filed on their behalf by their agents, duly authorized, and, in these circumstances, the fact that they were signed by mistake with the name of their customhouse brokers, F. W. Gertzen Co., instead of with the name of the principal, Smith & Nessle Co., for whom they were acting, can not make the protests bad, but they are in full compliance with the law.

See in this connection, Abstract 2241 (T. D. 25482), Abstract 19909 (T. D. 29339), Abstract 6767 (T. D. 26417), and Abstract 29695 (T. D. 32812).

The protests are therefore sustained under the claim as herrings at one-half cent per pound under paragraph 272.

CONCURRING OPINION.

Sullivan, *General Appraiser:* In concurring in the foregoing opinion of General Appraiser Brown I do so in so far as the validity of the protest is concerned because it is conceded in the stipulation entered into on behalf of the Government and the importers that such protest was signed by a duly authorized agent, as the statute, subsection N of section 3 of the tariff act of 1913, explicitly provides it may be. In the absence of the stipulation it would have been competent on the trial of the issue by oral proof to have established the relationship of F. W. Gertzen Co. to the principal, Smith & Nessle Co., and to have thus shown their authority to file the protest with the collector against his exaction of duties.

The board has held that the primary function of a protest is to advise the collector of the dissatisfaction of the importer with the duties assessed upon his merchandise. If the name, F. W. Gertzen Co., had appeared in connection with the entry for the first time on the protest the collector might have been justified in declining to review his decision for the reason that the protest was not signed by the owner, importer, consignee, or agent of the merchandise, but it required only an examination of the entry paper, upon which the collector's liquidation protested against appeared, to to show the collector that it bears the name not only "Smith & Nessle Co., importers," but, "F. Wm. Gertzen Co., customhouse brokers and forwarding agents." This, I think, sufficiently disclosed the agency of F. Wm. Gertzen Co. to have warranted the collector in having accepted the protest as being duly signed by the agent, importer, or owner of the merchandise.

BEFORE BOARD 2, NOVEMBER 12, 1914.

No. 36857.—DRAWNWORK.—Protests 430890, etc., of Awad, Attie, Boshi & Co. (New York). Opinion by Cooper, G. A.

Frank *v.* United States (5 Ct. Cust. Appls., —; T. D. 34469) followed as to drawnwork articles held properly classified under paragraph 349, tariff act of 1909.

BEFORE BOARD 3, NOVEMBER 12, 1914.

No. 36858.—FOREIGN-BUILT YACHT—TONNAGE TAX.—Protest 671746/4 of Chauncey M. Briggs (Chicago).

WAITE, *General Appraiser:* Section 37 of the tariff act of 1909 provides for a tonnage tax of $7 per ton upon the use of a foreign-built yacht, in lieu of which the owner of such yacht may pay an ad valorem duty of 35 per cent.

It appears that the yacht in question in this case, called *La Rita II*, was brought into the country under entry 15152, September 3, 1912. A tonnage duty was levied upon said yacht, which was not promptly paid, and for which, apparently, suit was brought. It was, however, ultimately paid by the owner of the yacht. The collector of customs, subsequent to that proceeding, levied an ad valorem duty under the second paragraph of section 37. The importer filed his protest against the payment of the duty, claiming that the law under which it was levied was unconstitutional. The law was at that time before the Supreme Court. It has subsequently been declared constitutional with reference to the tonnage tax; the provision for an ad valorem duty seems not to have been involved. See Billings *v.* United States (232 U. S., 261; T. D. 34429), United States *v.* Billings (232 U. S., 289; T. D. 34430), Pierce *v.* United States (232 U. S., 290; T. D. 34431), Pierce *v.* United States (232 U. S., 292; T. D. 34432), United States *v.* Goelet (232 U. S., 293; T. D. 34433), United States *v.* Bennett (232 U. S., 299; T. D. 34434), United States *v.* Bennett (232 U. S., 308; T. D. 34435), and Rainey *v.* United States (232 U. S., 310; T. D. 34436).

We think this protest should be construed as one against the payment of the ad valorem duty of 35 per cent which was assessed. The law appears to provide that in lieu of the tonnage tax the owner may elect to have an ad valorem duty assessed. We think, however, that in case of no election being made, it would be the duty of the collector to levy the tonnage tax, which, having been levied, would exonerate the owner from the payment of the ad valorem duty which appears to have been exacted in this case. We are of the opinion he was not liable for this duty, it appearing from the record that the tonnage tax was paid.

The protest is therefore sustained.

No. 36859.—COMMISSIONS.—Protests 704349, etc., of N. Stern & Son et al. (New York). Opinion by Waite, G. A.

G. A. 7557 (T. D. 34396) followed as to commissions. Protests sustained.

No. 36860.—Mill Buttings.—Protests 710770, etc., of T. W. Saunders et al. (Buffalo). Opinion by Waite, G. A.

Ends of lumber known as mill buttings, classified as waste under paragraph 479, tariff act of 1909, were held free of duty as firewood (par. 712). United States *v.* Saunders (5 Ct. Cust. Appls., —; T. D. 34136) followed.

No. 36861.—Artistic Antiquities.—Protest 730157 of Shreve, Crump & Low Co. (Boston). Opinion by Waite, G. A.

Certain articles were claimed entitled to free entry as artistic antiquities. Protest sustained in part.

No. 36862.—American Goods Returned—Regulations.—Protest 733844 of Geo. W. Bradenburgh (Philadelphia). Opinion by Waite, G. A.

A film classified under paragraph 474, tariff act of 1909, was claimed entitled to free entry as American goods returned (par. 500). Protest overruled, the regulations not having been complied with.

No. 36863.—Plaster of Paris Statuettes.—Protest 752832 of R. H. Macy & Co. (New York). Opinion by Hay, G. A.

Statuettes classified as earthenware under paragraph 93, tariff act of 1909, were held dutiable as manufactures of plaster of Paris, as claimed.

Before Board 2, November 13, 1914.

No. 36864.—Appliquéd Silks.—Protests 455203, etc., of Mills & Gibb (New York). Opinion by Howell, G. A.

United States *v.* Ewing (3 Ct. Cust Appls., 333; T. D. 32624) followed as to appliquéd silks.

Decisions on Applications for Rehearings.

No. 36865.—Rehearing Granted—Fitted Leather Cases.—Protest 683614 of Mark Cross Co., Abstract 36546 (T. D. 34774). October 31, 1914.

No. 36866.—Rehearing Granted—Wood Pulp and Paper.—Protests 615069, etc., of F. Salomon & Co. et al., Abstract 36601 (T. D. 34789). October 31, 1914.

No. 36867.—Rehearing Granted—Pyroxylin Articles.—Protest 668040 of A. Strauss & Co., Abstract 36569 (T. D. 34789). November 9, 1914.

No. 36868.—Rehearing Granted—Bicycle Handle Grips.—Protests 692734, etc., of Mead Cycle Co., Abstract 36592 (T. D. 34789). November 9, 1914.

No. 36869.—Rehearing Granted—Jewelry.—Protest 711746 of F. L. Kraemer & Co., Abstract 36688 (T. D. 34824). November 9, 1914.

(T. D. 34909.)

Colored glass cubes or mosaics.

Appeal directed from decision of the Board of United States General Appraisers of September 24, 1914, Abstract 36586 (T. D. 34789), involving the classification of colored glass cubes or mosaics.

Treasury Department, *November 17, 1914.*

Sir: I am in receipt of your letter of the 12th instant, inviting attention to the decision of the Board of United States General Ap-

praisers of September 24, 1914, Abstract 36586 (T. D. 34789), wherein it is held that certain colored glass cubes or mosaics which had been assessed with duty at the rate of 60 per cent ad valorem as articles of glass, colored, under paragraph 98 of the tariff act of 1909 were properly dutiable as manufactures of glass under paragraph 109 of the said act.

In view of the importance of the issue, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, ANDREW J. PETERS,
(103115.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 34910.)

Stamps for entries, bonds, etc.

Affixing of stamps to documents, etc., used in customs procedure required.

TREASURY DEPARTMENT, *November 17, 1914.*

To collectors of customs and others concerned:

Your particular attention is hereby directed to T. D. 2035 of October 26, 1914, issued by the Commissioner of Internal Revenue, containing a schedule of articles and occupations subject to the taxes imposed by the act approved October 22, 1914.

You will please issue instructions to your subordinates to insure that all documents and bonds which are required to be stamped are properly stamped and the stamps canceled before being accepted by them.

(103103.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 34911.)

Drawback on automobiles and parts.

Drawback on automobiles and parts manufactured by the Thomas B. Jeffery Co., of Kenosha, Wis., with the use of imported materials and parts.—T. D. 34507 of June 2, 1914, revoked.

TREASURY DEPARTMENT, *November 18, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on automobiles manufactured by the Thomas B. Jeffery Co., of Kenosha, Wis., in whole or in part with the

use of imported materials and parts and with the use of parts produced by domestic manufacturers in whole or in part from imported materials and covered by drawback rates now existing or which shall be promulgated in the future, under the conditions set forth in the sworn statements of the Thomas B. Jeffery Co., dated April 8, 1914 (filed in connection with T. D. 34507 of June 2, 1914), and October 17, 1914, transmitted herewith, and the sworn statements filed by domestic manufacturers in connection with drawback rates separately established.

The allowance shall not exceed the quantities of imported materials and number of imported parts used in the manufacture of the exported automobiles, as shown by the sworn statements of the Thomas B. Jeffery Co. or provided for by drawback rates separately established covering parts supplied to the said company, such allowance to be reduced by the quantity of imported materials which the value of the waste will replace.

Supplementary sworn statements and schedules may be filed modifying the originals or showing the use of other imported parts, materials or parts made from imported materials, new models of automobiles or parts manufactured for exportation, changes in quantities or values of imported materials or parts or of waste incurred, etc. Such supplementary sworn statements and schedules shall be referred to the special agents for verification, and their reports, together with the statements and schedules, submitted to the department for approval prior to liquidation of the entries referring thereto.

T. D. 34507 of June 2, 1914, is hereby revoked, such revocation to be effective as to automobiles and parts exported subsequent to the date hereof.

Respectfully, ANDREW J. PETERS,
(100549.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Milwaukee, Wis.*

(T. D. 34912.)

Drawback on flavoring extracts.

Drawback on flavoring extracts manufactured by Fries & Bro., of New York, N. Y., with the use of domestic tax-paid alcohol.—T. D. 34291 of March 19, 1914, revoked.

TREASURY DEPARTMENT, *November 19, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on flavoring extracts manufactured by Fries & Bro., of New York, N. Y., with the use of domestic tax-paid alcohol.

The allowance shall not exceed the quantity of domestic tax-paid alcohol appearing in the exported flavoring extracts, as shown by the sworn statements of the manufacturers, dated December 3, 1913, and February 10, 1914, which are on file in your office.

Supplementary sworn schedules covering other flavoring extracts manufactured by Fries & Bro. with the use of domestic tax-paid alcohol may be filed, and upon verification thereof drawback on the flavoring extracts specified therein may be allowed. The allowance shall not in any case exceed the quantity of domestic tax-paid alcohol appearing in the exported extracts.

T. D. 34291 of March 19, 1914, is hereby revoked.

Respectfully, ANDREW J. PETERS,
(100399.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34913.)

Plumage.

Rhea plumage admitted if procured from domesticated birds.—T. D. 34886 modified.

TREASURY DEPARTMENT, *November 19, 1914.*

SIR: The department refers to its letter of the 9th instant (T. D. 34886), relative to the plumage of the rhea.

It has been shown to the satisfaction of the department that the rhea, in some localities, is domesticated, and that many imported rhea feathers are taken from domesticated birds.

You are therefore hereby authorized to admit feathers of the rhea when the certificate of the American consul on the invoice covering the importation shall show that the feathers were taken from domesticated birds or on the production of other satisfactory evidence to that effect.

T. D. 34886 is hereby modified accordingly.

Respectfully, ANDREW J. PETERS,
(92655-27.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34914.)

Customs blanks—Notice of refund.

TREASURY DEPARTMENT, *November 19, 1914.*

To collectors and other officers of the customs:

Blank notices of refund for both the importer and the ultimate consignee have been adopted for use in the customs service, in lieu

of Customs Cat. No. 4875, "Notice to importer of balance in his favor," which is hereby abolished.

Customs Cat. No. 4875a, "Notice of refund—Importer." This blank, which is in the following form, will be filled out and sent to the importer making the entry or to the agent or broker if the entry is made in his name:

Notice of refund—Importer.

UNITED STATES CUSTOMS SERVICE,
COLLECTION DISTRICT NO. ——, PORT OF ——,
Collector's Office, ——, *191–.*

SIR: Upon the liquidation of your entry No. ——, per S. S. ——, from ——, dated ——, 191–, there is an apparent balance in your favor, amounting to $——.

A check to your order will be delivered to you or your authorized agents upon presentation of this notice at this office.

Respectfully,

——— ———,
Collector.

Mr. ——— ———.
——— ———.

Customs Cat. No. 4875b. This blank, which is in the following form, will be filled out and sent to the ultimate consignee or owner in cases where the name of such owner or ultimate consignee appears in the entry:

Notice of refund—Ultimate consignee.

UNITED STATES CUSTOMS SERVICE,
COLLECTION DISTRICT NO. ——, PORT OF ——,
Collector's Office, ——, *191–.*

SIR: The liquidation made this day of entry No. ——, per S. S. ——, arrived ——, 191–, in which your name appears as owner or ultimate consignee, shows a refund amounting to $——.

Your agents, ——— ———, have been notified thereof, and a check for the said amount will be issued to them upon their application to this office.

Respectfully,

——— ———,
Collector.

Mr. ——— ———,
——— ———.

Article 1082 of the Customs Regulations of 1908 is hereby amended to read as follows:

ART. 1082. *Refund of excess deposits.*—Whenever it is found on liquidation that a refund is due, a notice on Customs Cat. No. 4875a will be sent to the party in whose name the entry is made, and also a notice on Customs Cat. No. 4875b will be sent to the ultimate consignee or owner, if his name appears in the entry. This notice will be filled out and mailed simultaneously with the affixing of the liquidation stamp on the entry and the posting of the liquidation notice on the bulletin board. Such refunds shall be made from the collector's "Excess of deposits" account.

(93120.)

W. G. MCADOO,
Secretary of the Treasury.

(T. D. 34915.)

Common carrier.

Discontinuance of the bonded route of Texas-Mexican Railway Co. for the transportation of merchandise in bond.

TREASURY DEPARTMENT, *November 21, 1914.*

SIR: Referring to previous correspondence concerning the proposed discontinuance of the bonded route of the Texas-Mexican Railway Co. for the transportation of merchandise in bond, and it appearing from your letter of the 14th instant that there is no outstanding indebtedness against said company as a bonded common carrier, the discontinuance of the route covered by the bond of the company named, approved November 9, 1907, is authorized. You should cause the fact and date of discontinuance to be noted on the copy of the bond on file in the customs office at Corpus Christi, in your district, and the same should be retained, without cancellation, to meet any liability which may have accrued thereunder.

Respectfully, ANDREW J. PETERS,
(50967.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Laredo, Tex.*

(T. D. 34916—G. A. 7635.)

Tunny fish—Mackerel.

Tunny fish held not to be mackerel within the intent of Congress in enacting the provision in paragraph 273, act of 1909, reading "mackerel, halibut, or salmon, fresh, pickled, or salted, one cent per pound." Classification as fish in tins under paragraph 270 sustained.—United States *v.* Miller & Tokstad (5 Ct. Cust. Appls., —; T. D. 34443) cited.

United States General Appraisers, New York, November 16, 1914.

In the matter of protests 710004, etc., of Meyer & Lange *et al.* against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (MCCLELLAND, SULLIVAN, and BROWN, General Appraisers).

BROWN, *General Appraiser:* The merchandise here involved is tunny fish in tins, classified at 30 per cent ad valorem under the clause in paragraph 270, act of 1909, reading:

All other fish (except shellfish) in tin packages.

In protest 710004 the fish were packed in tomato sauce containing some added oil. In protest 730144 the fish were packed in oil, but as the size of the tins was too large to be classified under the fish-in-oil provisions in paragraph 270, they were classified as fish in tins.

The merchandise is claimed to be dutiable at 1¼ cents per pound as fish skinned or boned under paragraph 273, but the principal claim

upon which reliance is placed is that they are mackerel and properly dutiable under the last clause of paragraph 273, reading:

Mackerel, halibut, or salmon, fresh, pickled, or salted, one cent per pound.

The importer proved by Dr. R. C. Osburn, assistant professor of zoology in Columbia University and assistant director of the New York Aquarium, that, scientifically, tunny fish belong to the same family as mackerel. He testified that tunny fish ranges around the world in warmer waters; that it is found widely distributed in the Pacific and the Atlantic Oceans and the Mediterranean Sea; that it comes as far north in the North Atlantic as Nova Scotia; that it is a large fish, ranging over 1,000 pounds in weight; that in the Mediterranean it runs about 500 to 600 pounds, and on this coast it runs considerably larger; that it is known sometimes as a tunny or horse mackerel on this coast. Further, that the chub, Spanish mackerel, albacore, ocean bonito, and other bonitos were all of the mackerel family; that the difference in relationship between horse mackerel and common mackerel is about as marked as the difference between the Spanish mackerel and common mackerel; that all these fish were recognized by scientists throughout the world as members of the mackerel family; that it is the largest member of the family; that the albacore, another member of the family, reaches about 600 pounds, and some of the other members reach a weight of over 100 pounds.

On cross-examination he said (p. 9, record):

There are several species of fishes called horse mackerel, for instance, this tunny; some of them do not even belong to the same group of fishes with it.

When asked if he ordered mackerel from his fish supplier he would ever get tunny fish, he said "No," he would "get the common mackerel or the Spanish mackerel." He further said that the tunny of the Mediterranean was the bonito, or little tunny, ranging in weight from 40 to 100 pounds; also occurring on the California coast and our coast.

The Government put on the stand a number of witnesses in an effort to establish a commercial definition of the term "mackerel" which would exclude tunny fish. This evidence is not altogether satisfactory, and the importer claims that the Government entirely failed in this effort.

Assuming, for the sake of the argument, that this claim is correct and that no commercial definition has been shown, still this evidence does not, on the other hand, include tunny fish under the term "mackerel," and we are led to the conclusion that tunny fish are not included in the term "mackerel," considering only the common meaning of the word, for the following reasons:

The leading authority on the classification of a fish by a specific name is the case of United States *v.* Miller & Tokstad (5 Ct. Cust. Appls., —; T. D. 34443). In that case the anchovies, sprats, and sardines there considered were held to be herrings according to the common understanding of the word. As we said in the Russian fish case, G. A. 7581 (T. D. 34603), referring to the Miller & Tokstad case:

> This was arrived at in a cumulative way, first, from the testimony of the merchants dealing in the fish, which failed to establish a uniform or exclusive commercial meaning of the word "herring," but whose testimony, as the court says, did establish *pro tanto* that among merchants dealing for many years in these variously named fish it was commonly understood by them that the sardines, anchovies, and sprats imported into this country and put up in the manner as was this imported merchandise are all deemed to belong to the class of fish commonly known as herrings; secondly, supported by the scientific definition of the family, which was in accord with the dictionary definitions and included these fish; and, thirdly, supported by a departmental practice classifying anchovies, sprats, and sardines as herrings, acted on by Congress in the act of 1909, as illustrated by the language of the Notes on Tariff Revision presented at that time. So that from these three sources, all thus taken together, the common meaning was arrived at by the court, and the word "herrings" as used by Congress was held to include anchovies, sprats, and sardines.

Comparing the situation in the Miller & Tokstad case with the case at bar, the following appears: Of the three considerations, which taken together led the court to the conclusion that sardines were herrings, according to the common meaning of the word, only one is present here. The importer made no effort to show affirmatively that tunny fish were commercially mackerel, and unless the common meaning is to be taken, we think that burden was upon him. Moreover, the testimony on commercial definition here does not establish, even *pro tanto*, that tunny fish were dealt in by the trade as mackerel, as it did in the case of the sardines in the Miller & Tokstad case. Secondly, there was no proof of an established practice to so classify tunny fish as mackerel, or any action by Congress in view of such a practice. There only remains the scientific definition, namely, that tunny fish scientifically belong to the mackerel family.

On this alone we can not find a common meaning which would include tunny fish as mackerel. Two Hundred Chests of Tea (9 Wheat., 428, 437). As Justice Story said in that case, Congress "did not suppose our merchants to be naturalists, or geologists, or botanists," or, as we might say here, ichthyologists.

Taking the theory of the Miller & Tokstad case as a whole, and the considerations which taken together led the court to the conclusions there reached, we think that it makes against the importers' contention in the very different circumstances existing here, as above pointed out.

We note in conclusion that this board in protest 425554, decided January 19, 1911, held that bonito imported from the Mediterranean

Sea were neither commercially nor commonly known as mackerel, and overruled the protest making that claim.

As to the other contention that the merchandise is fish skinned or boned at 1¼ cents per pound under paragraph 273, it is sufficient to quote the language of Judge Montgomery in Benson *v.* United States (4 Ct. Cust. Appls., 467; T. D. 33882), wherein, referring to the merchandise and claims in that case, he said:

> It is further contended that if the mixed provision clause be held applicable the provision of the paragraph relating to fish skinned and boned, rather than that relating to fish in tin packages, should be applied. Undoubtedly the fish content in question is fish skinned and boned; but they are also fish in tin packages, and were the importation composed wholly of the component material of chief value, namely, fish, would be dutiable as fish in tins.

There the classification was fish in tins and one of the claims relied on was as fish skinned or boned. The merchandise in the case at bar is composed wholly of fish. It is undoubtedly fish in tins and fish skinned or boned, and, following this finding of Judge Montgomery in the case just referred to, it should be classified as fish in tins.

For these reasons the protests are in all respects overruled.

(T. D. 34917—G. A. 7636.)

Reliquidation at increased valuation.

1. Power of Collector.

The collector is not an appraising officer, and he has no authority under the statute to reliquidate an entry at a higher valuation than that at which it was appraised by the appraising officers, no reappraisement having been asked or had.

2. Same—Appraisal Procured by Fraud.

This is true notwithstanding that the passage of the goods through the customhouse at the price at which they were appraised was accomplished by means of a declaration that was untrue and an invoice that was false and fraudulent.

3. Remedy in Case of Fraudulent Entry.

In such a case the Government is not without a remedy. Paragraph G of section 3 of the tariff act of October 3, 1913, provides a criminal action against the offender, and paragraph H provides an action for the forfeiture of the goods or their value.

United States General Appraisers, New York, November 16, 1914.

In the matter of protest 759444 of Blum Hardware Co. against the assessment of duty by the collector of customs at the port of Galveston.

Before Board 2 (Fischer, Howell, and Cooper, General Appraisers).

Fischer, *General Appraiser:* This is a protest against the reliquidation of an entry by a collector of customs some three months after the appraiser had reported his action on the goods, no reappraisement having been asked or had. The reasons given by the collector for his action are stated in his report to the board as follows, and,

inasmuch as the importers have not traversed these statements, choosing to make no appearance when the case was called, they may be taken for the purposes of this decision as true:

In transmitting the protest of the Blum Hardware Co. this office has the honor to state that the assessment of additional duty was not based upon a reappraisement of entry No. 1623, but upon a reliquidation by the collector on account of the fraud practiced by the vendors and their agents in making out an invoice for customs purposes, which was duly certified to by the United States consul, and a private or commercial invoice in an amount considerably greater than the consular invoice.

The fraudulent consular invoice was used by the importers in passing the entry in question, although they were then and there in possession of a commercial or private invoice showing values of the merchandise in excess of the consular invoice, and further showing dutiable charges for seller's commissions which were not disclosed or specified in the consular invoice covering the merchandise herein entered.

The importers, therefore, are chargeable with a knowledge of the fraud practiced herein, and fraud having been proven beyond peradventure of a doubt, the collector had the legal right to reliquidate this entry and assess additional duties on the higher values ascertained by him. The notice given to the importers of "an advance ascertained" was error, but of no consequence, and was fully cured by the collector's notice of reliquidation, which was dated July 17, 1914, the receipt of which is duly acknowledged by the brokers in their protest.

As gleaned from the papers transmitted by the collector, it appears that the Blum Hardware Co., of Galveston, Tex., imported at that port during the month of April, 1914, 1,633 packages of steel in the form of flats, round bars, and square twisted bars. The steel was entered after deducting the nondutiable charges at 4,216.42 marks, equivalent to about $1,003, and the goods were appraised at that value. Subsequently it came to the knowledge of the collector that the importers had in their possession a private invoice for the steel which showed a higher value than that named in the consular invoice upon which the entry was made. Upon demand of the customs officials the importers produced this private invoice, whereupon the collector reliquidated the entry upon the valuation shown therein. The exact date when the collector obtained knowledge of the private invoice is not shown, but it may be presumed that it was more than 60 days after the appraisement, and hence too late for him to appeal to reappraisement. (Paragraph M, section 3, act of October 3, 1913.) The protest therefore squarely presents the issue as to whether, under such circumstances as these the collector may reliquidate an entry, when no reappraisement has been held, upon a valuation higher than at which the goods were entered and finally appraised. The case is one in which, if any possible construction of the law permits the collector to take this action, it should be adopted, for, on the facts as disclosed to the board and not contradicted by the importers, a palpable fraud has been committed upon the United States. On the back of the entry there appears a

solemn declaration signed for the Blum Hardware Co. by Harry A. Black, who also signed the entry, and in this declaration he states:

That the invoice and entry which I now produce contain a just and faithful account of the actual cost of the said goods, wares, and merchandise and include and specify the value of all cartons, cases, crates, boxes, sacks, casks, barrels, hogsheads, bottles, jars, demijohns, carboys, and other containers or coverings, whether holding liquids or solids, which are not otherwise specially subject to duty under any paragraph of the tariff act, and all other costs, charges, and expense incident to placing said goods, wares, and merchandise in condition packed ready for shipment to the United States, and no other discount, drawback, or bounty but such as has been actually allowed on the same; that I do not know nor believe in the existence of any invoice or bill of lading other than those now produced by me, and that they are in the state in which I actually received them. And I further solemnly and truly declare that I have not in the said entry or invoice concealed or suppressed anything whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares, and merchandise; that to the best of my knowledge and belief the said invoice and the declaration thereon are in all respects true, and were made by the person by whom the same purport to have been made, and that if at any time hereafter I discover any error in the said invoice or in the account now produced of the said goods, wares, and merchandise, or receive any other invoice of the same, I will immediately make the same known to the collector of this district.

In view of the facts recited in the collector's report, it is obvious that this declaration contains statements that are wholly untrue, but after a careful examination of the whole question and of the statutes and decisions bearing thereon, we are obliged to hold that no warrant exists in law for the action taken by the collector. The Government is not, however, wholly without a remedy, for it has a remedy, as we shall later point out. Although the collector in his report to the board repudiates the suggestion that he made a new appraisement in the case, his reliquidation at a higher valuation than that approved by the appraiser is the same thing in effect, and in the present state of the law it must be held unauthorized.

Many reasons conduce to this conclusion. In the first place, nowhere in the statutes is there found any express grant of authority to the collector to reliquidate in the manner he has done here. He is a statutory officer, and his power and authority are only such as are granted to him by the statute, and if he undertakes to perform acts which he is not authorized to do his action is clearly illegal and void. On the other hand, there is a statute which makes the decision of the appraiser as to value, where there has been no reappraisement, absolutely final and conclusive as against all persons. Paragraph M of section 3 of the tariff act of October 3, 1913, after prescribing the duties of the appraiser and the conditions under which reappraisements may be had, says:

The decision of the appraiser, or the person acting as such (in case where no objection is made thereto, either by the collector or by the importer, owner, consignee, or agent), * * * shall be final and conclusive against all parties and shall not be subject to review in any manner for any cause in any tribunal or court. * * *

This language is peculiarly emphatic, and it would seem to bar such an action as the collector took in this case. It was considered at some length in United States *v.* Calhoun (184 Fed., 499; T. D. 31730). Question was made there as to the authority of the collector in connection with the appraisement of merchandise, and the conclusion was reached that while he had undoubted power to reliquidate entries, he had no authority under such power even to inquire into the correctness of an appraisement of goods. Referring to the statute from which we have quoted above, Judge Hand said:

The statute is as peremptory as can be, and makes the appraisal conclusive upon all parties, including the collector, and not subject to review in any manner for any cause or by any tribunal. No words could be stronger. The right of the collector to liquidate is not affirmatively given anywhere, but is recognized by implication in subsection 14 of section 28 of the present act in that he is not concluded by his own liquidation, and in section 21 of the act of June 22, 1874, in that the right is limited to one year. If the right be supposed to extend to a reappraisal, it is met by three difficulties, each insuperable—first, the collector is not concluded by the appraisement of subsection 13 in the very teeth of the statute; second, the two statutes themselves conflict, since under subsection 13 the conclusiveness is immediate, while under section 21 of the act of 1874 it is such at the end of one year; third, the collector is made an appraising officer, which, when there are appraisers, he is never intended to be, but is indeed intended to be a party before the appraiser. If the construction of the Government be sound, a collector need never abide by any appraisal, though he does not appeal, for under the guise of reliquidation he may at once appraise it for himself.

This ruling was affirmed by the Circuit Court of Appeals for the Second Circuit in 215 Fed., 709 (T. D. 34846).

This opinion discussed the situation generally, citing almost all the decisions in point, and in our opinion it concludes the matter. In addition to this case, see also, as to the authority (or rather the lack thereof) of the collector in matters of appraisement and of the appraiser to make a new appraisement of merchandise, Wills *v.* Russell (30 Fed. Cas., 70), United States *v.* Morewood (94 Fed., 639), United States *v.* Leeming (153 Fed., 489; T. D. 27986), United States *v.* Bennett (2 Ct. Cust. Appls., 249, 252; T. D. 31975), G. A. 2754 (T. D. 15320), G. A. 4015 (T. D. 18617), G. A. 5100 (T. D. 23601), G. A. 5896 (T. D. 25970), G. A. 6402 (T. D. 27492).

As was before intimated, the Government is not by this decision left remediless, for, since the entry of this merchandise and its appraisal at the prices at which it passed the customhouse were procured by fraud, there is seemingly a clear case for the invocation of paragraphs G and H of section 3 of the tariff act of October 3, 1913. Paragraph G provides for a criminal action against the offender, and paragraph H provides for the forfeiture of the goods or of the value thereof. This point was also discussed by Judge Hand in United States *v.* Calhoun, *supra.* He said:

The Government insists that a different rule applies in cases in which the appraisal has been procured by fraud. I do not think so. In case there has been a fraudulent

appraisal, the Government has the right in subsection 9 of section 28 of the tariff act to sue for the full value of the goods, and it then has all the right to procure evidence which any plaintiff has in a court of law. Moreover, the offense is criminal, and the United States is therefore protected in that way as well. * * * It is not as if the United States had no protection.

It follows as a consequence of all this that the action of the collector in reliquidating this entry at a higher valuation than that approved by the appraiser was unauthorized and beyond his power. The protest is sustained.

(T. D. 34918—G. A. 7637.)

Drawnwork.

Tidies and bureau scarfs, from which threads have been drawn and the remaining loose threads fastened or grouped together by an additional thread inserted by hand, so that ornamental figures or designs are produced on the articles, are dutiable at 60 per cent ad valorem as "woven fabrics or articles from which threads have been omitted, drawn, punched, or cut, and with threads introduced after weaving, forming figures or designs," under paragraph 358 of the act of 1913.

United States General Appraisers, New York, November 20, 1914.

In the matter of protest 733458 of K. Takayama against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

COOPER, *General Appraiser:* The merchandise covered by this protest consists of tidies and bureau scarfs. In each of these articles a number of the threads running in one direction are withdrawn. The remaining loose threads are adjusted and grouped, by means of additional threads inserted by hand, so as to form patterns or figures in the shape of an hourglass, between which are diamond shaped open spaces. The added threads do not *per se* form any figure or design. The articles are also embellished by hemstitching, but that part of the decoration is not in question, and we consider only the drawnwork ornamentation. Said articles were returned for duty at the rate of 60 per cent ad valorem under the following provisions in paragraph 358 of the act of 1913:

358. * * * Woven fabrics or articles from which threads have been omitted, drawn, punched, or cut, and with threads introduced after weaving, forming figures or designs, not including straight hemstitching.

Numerous claims are made in the protest, but the only one relied upon by the importer in his brief is that the articles are dutiable at 30 per cent ad valorem as manufactures of cotton under paragraph 266 of said act. It is the contention of the importer that paragraph 358 covers only that class of drawnwork in which the added threads

form figures *per se*. It is urged that the phrase "forming figures" limits "threads," and that consequently the provision covers only those articles in which spider webs, wheels, Maltese crosses, and other lacelike effects in various forms are added or inserted in the open spaces made by withdrawing the threads, and that the class of drawnwork in which no ornamentation is added by the additional threads *per se* falls for duty under the catch-all provisions (paragraph 266 or 284), according to the component material of chief value.

We can not agree to the construction contended for by the importer. The paragraph provides for "articles from which threads have been omitted, drawn, punched, or cut, and with threads introduced after weaving, forming figures or designs." From the grammatical construction of the clause it is patent that the legislative purpose was to provide for articles decorated with figures or designs by means of a process involving two operations, namely, by withdrawing threads and introducing other or foreign threads. We are called upon to decide whether or not the articles in question come within that description. In the samples before us threads have been drawn out and other threads inserted, and by this operation figures were produced. It is our opinion that such ornamentation brings the articles directly within the purview of the paragraph. Nor is it required that the figures or designs specified shall be formed entirely by the added threads. The phrase "forming figures or designs" being separated from the balance of the clause by a comma, explains the result to be obtained by the whole process described, and does not modify the word "threads" alone, as contended for by the importer. In Frank *v.* United States (5 Ct. Cust. Appls., —; T. D. 34469) the importer claimed that the phrase "ornamented or embroidered in any manner herein described, in any part thereof, however small," in paragraph 349, act of 1909, modified the word "openwork" only, which immediately preceded it and was separated therefrom by a comma; but the court held that the phrase applied alike to all the processes of decoration described in the whole clause. The court said:

> Nor is this interpretation inconsistent with the grammatical construction of the provision in question. For thereby the clause "ornamented or embroidered in any manner herein described, in any part thereof, however small," is made to apply alike to articles or fabrics embroidered, (articles or fabrics) tamboured, (articles or fabrics) appliquéd, (articles or fabrics) scalloped, and (articles or fabrics) from which threads have been drawn, cut, or punched to produce openwork, from each and all of which enumerations the modifying clause is separated by the punctuation of a comma only.

In the merchandise in question threads have been drawn and additional threads have been introduced and form figures by grouping the remaining warp or filling threads together, and it is our opinion

that the clear intention is shown to include such articles within this provision. This view is reenforced by the fact that Congress has inserted in this provision the words "not including straight hemstitching," which signifies that hemstitched articles are of such a character as to be included within the general description, and without the excepting clause would be classifiable under that provision.

Sutherland, in Statutes and Statutory Construction, page 295, states:

> Where there is a prohibition, grant, or regulation in general words, and a saving of particular things, there is a strong implication that what is excepted would have been within the purview if it had not been excepted; and thus the purview may be made more comprehensive than it would otherwise have been.

In hemstitching, threads are withdrawn, and the remaining warp or filling threads, as the case may be, are grouped together by means of the additional threads introduced, which not only draw such threads together, and thus form a pattern, but also bind and support the rough edges. The same method is pursued in manufacturing the drawnwork in question. If hemstitched articles are covered by the general description in this clause, the articles in question also would be covered thereby, for the decoration or ornamentation on each class is of the same nature. As Congress had described a grade or class of ornamentation in plain language, and has excepted hemstitching therefrom by appropriate words under the maxim "*Exceptio probat regulam de rebus non exceptis*," the ornamentation in question, which is of the same character as hemstitching, is within the purview.

The legislative intent may be ascertained by an examination of the history of the litigation covering this class of merchandise. Prior to the act of 1909 there was no specific provision for drawnwork, and there was a diversity of decisions as to the proper classification of such merchandise; for instance, drawnwork articles were held to be dutiable as articles in imitation of lace (G. A. 4643; T. D. 21944), and they were also held not dutiable as lace or articles in imitation of lace (United States *v.* Ulmann, 139 Fed., 3; T. D. 26271); they were held dutiable as embroideries (Beach *v.* Sharpe, 154 Fed., 543; T. D. 28281), and later they were held not to be embroideries (United States *v.* Simon, 169 Fed., 106; T. D. 29702). In the act of 1909 Congress reenacted the provision for "articles made wholly or in part of lace or laces, or in imitation of lace," and also made a provision, for the first time, for "articles or fabrics * * * from which threads have been drawn, cut, or punched to produce openwork, ornamented or embroidered in any manner herein described, in any part thereof, however small." Under that act the court held, on the evidence in the case of Frank *v.* United States (3 Ct. Cust. Appls., 216; T. D. 32534), that the drawnwork before it, in which figures were formed in the open spaces by the additional threads *per se*, was "in

part of lace or imitation lace." At the enactment of the tariff act of 1913 this decision was the highest judicial expression upon the subject, and Congress, which is presumed to have been cognizant thereof, reenacted the provision for articles in part of lace or imitation lace in substantially the same language used in the act of 1909, and in addition thereto added the words "of any kind." It then made a provision in the latter part of the paragraph for "articles from which threads have been omitted, drawn," etc. Thus the intention is clearly shown to include in the lace provision the drawnwork having added figures, such as was passed upon by the court, and, in the provision for "articles from which threads have been omitted," etc., the drawnwork, such as we have in the sample before us, in which figures are not formed by the added threads *per se*, but are made by grouping, by means of the additional thread, the remaining warp or filling threads together.

In view of the law and the decisions cited, we are of opinion that Congress intended to impose duty at 60 per cent ad valorem on both classes of drawnwork, whether the added threads formed figures *per se* or not, and this conclusion is in harmony with the grammatical construction of the paragraph.

The protest is overruled.

(T. D. 34919—G. A. 7638.)

Mirrors—Pyroxylin articles.

1. Small circular hand mirrors, set in a celluloid case having a handle and a receptacle in the back, closed by a lid, for holding powder or a powder puff, composed in chief value of pyroxylin, are dutiable as mirrors under paragraph 109, and not as manufactures in chief value of pyroxylin under paragraph 17 of the tariff act of 1909.

2. The word "mirror" must be taken in its ordinary sense. The addition of a frame or case neither changes its character or use, nor advances it into a new article.

United States General Appraisers, New York, November 20, 1914.

In the matter of protest 702103 of B. Altman & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers).

Sullivan, *General Appraiser:* Small hand mirrors having celluloid frames, assessed for duty at 65 cents per pound and 30 per cent ad valorem as manufactures of pyroxylin under paragraph 17 of the tariff act of 1909, are claimed to be dutiable under paragraph 109 of the same act as mirrors at 45 per cent ad valorem.

An inspection of the exhibit in evidence shows that it is an article composed in chief value of celluloid. It is an ordinary pocket or hand mirror, circular in shape, with a handle about 2 inches in

length, the mirror being about 2¼ inches in diameter, set in a celluloid frame or case, and beautifully constructed. In the back of the case is an opening in which can be placed a small amount of powder and a small powder puff. The appraiser states it is in chief value of pyroxylin, and this is not contradicted by the importers.

The contention of the importers hinges on the question whether or not mirrors are to be classified as such, irrespective of the case in which placed or the surrounding. No testimony was taken as to trade meaning or commercial usage.

In the matter of protest 17196b of O. G. Hempstead & Son, G. A. 2008 (T. D. 13814), the board had before it 25 gross of gentlemen's toilet cases, assessed for duty under paragraph 21 of the tariff act of 1890 and claimed to be dutiable at 45 per cent ad valorem under paragraph 122 of the same act. It was found by the board that the covers of the toilet cases were composed of celluloid, bound with leather and glued to cardboard or stiff paper. The covers were joined together by means of narrow strips of leather, and opened and closed in the same manner as a book. A small beveled mirror was pasted to the inner surface of one of the covers, and the other cover was provided with a pocket divided into three compartments containing metal glove fasteners, mustache comb, ear and finger-nail cleaner. It was found by the board that celluloid was the component material of chief value. The protest was sustained and the merchandise held dutiable under paragraph 122 as a mirror, the paragraph being as follows:

122. All stained or painted window-glass and stained or painted glass windows, and hand, pocket, or table mirrors not exceeding in size 144 square inches, with or without frames or cases, of whatever material composed, * * *.

The board held the fact that the mirror as imported had accessories which adapted the entirety to other uses was not sufficient to exclude such merchandise from classification as a mirror.

In the matter of protest 65170f of Errico Bros., G. A. 4843 (T. D. 22744), the board had before it the same class of merchandise under the act of 1897. It was returned by the local appraiser as mirrors less than 144 square inches, and duty assessed thereon at the rate of 45 per cent ad valorem under the provisions of paragraph 112 of the act of July 24, 1897. It was claimed dutiable under paragraph 208 as a manufacture composed in chief value of wood. It was found as a fact in the valuation of the whole article the mirror was worth about 1 lira and the wood about 16½ lires. Paragraph 112 of the act of 1897 declares:

Stained or painted glass windows, or parts thereof, and all mirrors, not exceeding in size 144 square inches, with or without frames or cases, * * * 45 per centum ad valorem.

It was held by the board that, notwithstanding wood was the component material of chief value, that would not change the classi-

fication, for such articles would still be mirrors in fact, and therefore the *eo nomine* classification was controlling.

That was the situation until the passage of the act of 1909. With reference to celluloid, collodion, and compounds of pyroxylin, the paragraphs of the acts of 1890 and 1897 are very similar to that of the tariff act of 1909. The paragraph with reference to mirrors of the tariff act of 1909 being paragraph 109, is the same as that of the tariff act of 1897.

In United States *v.* Metropolitan Aluminum Co. (3 Ct. Cust. Appls., 224; T. D. 32537) the Court of Customs Appeals had before it pocket imitation leather goods holding small mirrors and combs or pencils and memorandum tablets. It was held that the presence of the comb or the pencil and paper did not remove the articles from the category of mirrors in cases, provided for in paragraph 109 of the tariff act of 1909, such provision being more specific than paragraph 17 of the same act. While it is true in the foregoing case that collodion or pyroxylin may have been the component material of chief value, yet that did not remove the merchandise from paragraph 109, the court stating:

> Manifestly the articles under the findings of the board are not in chief value of collodion or pyroxylin or any of the compounds thereof. They are mirrors with cases. Indeed, their construction indicates their prime and probably only substantial usefulness rests in the use of the mirrors.

Applying the rules enunciated in the foregoing authorities to the merchandise in the case at bar, we can not arrive at any other conclusion than that the classification contended for by the protestants is the correct one. It has been held that the word "mirror" has no commercial or trade meaning; that there is no such trade term as a "framed mirror" or "mirror with frame" or "mirror without case;" that the word "mirror" must be taken in its ordinary sense; that the addition of a frame or a case neither changes its character or use nor advances it into a new article. That was the conclusion of the Federal court in Wiederer *v.* United States (78 Fed., 809), and it conforms with our view.

The case being composed of pyroxylin, and more valuable than the small mirror, does not change the use of the article; it is still a mirror. The statement of the appraiser that it is in fact a powder box with a small mirror set inside is not sustained by an examination of the sample. It is true, as heretofore stated, there is a small box or compartment in the back of the mirror frame into which powder or a small powder puff can be placed, but that does not make the entirety a powder box. Its usefulness is that of a mirror, as a mere observation of the article would indicate.

The protest is sustained and the action of the collector reversed. Reliquidation will follow accordingly.

(T. D. 34920.)

Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, Somerville, and Hay.

BEFORE BOARD 1, NOVEMBER 16, 1914.

No. 36870.—IVORY TOILET SETS—ENTIRETIES.—Protest 749083 of Davies, Turner & Co. (New York). Opinion by McClelland, G. A.

A box in chief value of wood, designed to contain an ivory toilet set, which was packed separately, was held dutiable as an entirety as a manufacture of ivory under paragraph 369, tariff act of 1913. Protest overruled claiming the box dutiable as a manufacture of wood (par. 176). G. A. 7036 (T. D. 30688) cited.

No. 36871.—HATTERS' FUR.—Protest 726707–45455 of Bernard, Judae & Co. (Chicago). Opinion by McClelland, G. A.

Merchandise classified as fur not on the skin, prepared for hatters' use, under paragraph 439, tariff act of 1909, was claimed dutiable as waste (par. 479). Protest overru ed.

No. 36872.—CODFISH IN WOODEN PACKAGES.—Protest 613382 of F. B. Vandegrift & Co. (New York). Opinion by Brown, G. A.

Codfish in wooden packages containing less than 100 pounds classified under paragraph 270, tariff act of 1909, was claimed dutiable under paragraph 272 or 273. Protest overruled.

No. 36873.—FISH IN TINS.—Protests 418201, etc., of John Blumers & Bros. et al., protest 709108 of R. H. Macy & Co., and protest 715327 of Moscohlades Bros. (New York). Opinions by Brown, G. A.

United States *v.* Miller (5 Ct. Cust. Appls., —; T. D. 34443) followed as to fish in tins.

No. 36874.—FISH IN OIL.—Protest 693155–44171 of D. Antolini Co., and protest 730692–45488 of Wilbur S. Hopkins (Chicago), protest 705116–4547 of Illinois Central R. R. Co. (New Orleans), protests 724972, etc., of W. A. Brown & Co. et al., and protest 736132 of G. Cella & Bro. (New York), and protest 702082 of American Express Co. (St. Louis). Opinions by Brown, G. A.

Smith *v.* United States (5 Ct. Cust. Appls., —; T. D. 34008), Abstract 23783 (T. D. 30828), and Abstract 29054 (T. D. 32681) followed as to fish in oil.

BEFORE BOARD 2, NOVEMBER 16, 1914.

No. 36875.—TENNIS NETS.—Protest 730564 of Wright & Ditson (Boston).

COOPER, *General Appraiser:* Certain nets, returned as tennis nets made of manila fiber, were classified as manufactures of vegetable fiber and duty was collected at the rate of 35 per cent ad valorem under paragraph 284 of the act of 1913. It is claimed that said articles are dutiable at 25 per cent ad valorem as nets and seines under paragraph 271.

At the trial the importer confined his testimony to the question of whether or not the material out of which the nets were manufactured is hemp, and one of the witnesses stated that manila fiber was often referred to as manila hemp. It appears to the board,

however, that the importer has overlooked the real issue in the case. The protest claims that the merchandise is dutiable under parargaph 271, which provides for "gill nettings, nets, webs, and seines." In G. A. 2804 (T. D. 15410) certain nets were held dutiable under the same provision in the act of 1890 on the ground that they were fishing nets used for catching shrimps. It is commonly known, and has been taken judicial notice of by the courts, that gill nets are used principally for fisheries. American Net & Twine Co. *v.* Worthington (33 Fed. 826), McNab *v.* Seeberger (39 Fed., 759). The paragraph does not specially name "gill nets," but it names "gill nettings and nets." Gill nettings and seines are well-known varieties of fishing tackle. In Ederer *v.* United States (T. D. 25111) the United States Circuit Court for the Northern District of Illinois held that under the rule of *ejusdem generis* the provision for "nets or nettings" in paragraph 339, act of 1897, was limited in its application to goods of the same kind as to quality and use as the other articles there enumerated. Applying the same reasoning to the case at bar, we hold that the provision for "nets" in paragraph 271 is limited to those used in fisheries and fishing. No testimony was offered in this case tending to show that the articles in question are suitable and intended for use in fishing and the protest claiming the tennis nets in question to be one of the nets provided for in paragraph 271 is therefore overruled.

BEFORE BOARD 1, NOVEMBER 18, 1914.

No. 36876.—CRUDE GUM BENZOIN—AROMATIC SUBSTANCE.—Protests 746088, etc., of McKesson & Robbins (New York). Opinion by McClelland, G. A.

An article classified as an aromatic substance under paragraph 49, tariff act of 1913, was held entitled to free entry as crude gum (par. 477).

No. 36877.—ORCHIL.—Protests 723200, etc., of W. A. Ross & Bro. et al. (New York). Opinion by McClelland, G. A.

G. A. 7607 (T. D. 34817) followed as to orchil or orchil liquid held free of duty under paragraph 564, tariff act of 1913.

No. 36878.—BUCKLES OR SLIDES OF METAL.—Protests 730554, etc., of the American Express Co. (Boston).

SULLIVAN, *General Appraiser:* The merchandise in question is stated by the appraiser to be metal slides or buckles to be worn on shoes or slippers. It was returned for duty at 60 per cent ad valorem under paragraph 356, and the protests claim, *inter alia*, that it is properly dutiable at 20 per cent ad valorem under paragraph 167 of the tariff act of 1913.

An examination of the samples in evidence confirms the appraiser's description. They consist of slides or buckles that are used on the fronts of ladies' shoes, but may with equal propriety be worn upon belts or hats. No testimony was taken with reference to the commercial usage or designation of the article, the testimony on the part of the importer being that the merchandise is used on the fronts of ladies shoes, and that they are not buckles within the meaning of the term, but are known as slides.

The paragraph of the statute under which the merchandise was classified so far as applicable is as follows:

356. Jewelry, commonly or commercially so known, * * * and articles valued above 20 cents per dozen pieces designed to be worn on apparel or carried on or about or attached to the person, such as and including *buckles*, * * * and *like articles;* all the foregoing and parts thereof, finished or partly finished, composed of metal, whether or not enameled, washed, covered, or plated, including rolled gold plate, and whether or not set with precious or semiprecious stones, pearls, cameos, coral, or amber, or with imitation precious stones or imitation pearls, 60 per centum ad valorem. (The italics are ours.)

This statute is quite specific as to the merchandise enumerated. It uses the words "buckles, and like articles," and states that the same are dutiable at 60 per cent ad valorem when composed of metal and valued above 20 cents per dozen pieces.

Paragraph 167, under which it is claimed the merchandise should be assessed with duty, refers to—

167. Articles or wares not specially provided for in this section; * * * if composed wholly or in chief value of iron, steel, * * * nickel, * * * or other metal, but not plated with gold or silver, and whether partly or wholly manufactured, 20 per centum ad valorem.

It will be admitted the merchandise is metal not plated with gold or silver, and that it is manufactured, but those facts would not place it within paragraph 167, because it is practically specially provided for in paragraph 356, it being either a buckle or a like article, and paragraph 167 provides for articles "*not specially provided for in this section.*"

We are of the opinion that a slide is a species of buckle, or at least is a like article to a buckle, and we are confirmed in this opinion by the board's decision in the matter of protests 26985f, etc., of Stern Bros. et al., G. A. 4306 (T. D. 20298). In that case the merchandise consisting of hatpins, breastpins, cabochons, *buckles*, *slides*, or agraffes, and other articles of personal adornment, was held dutiable under paragraph 434 of the act of 1897, being the jewelry paragraph of that act, and buckles and slides were included in class 3 of the items covered by that decision, thereby showing that the board considered them as like articles.

In United States *v.* Schiff (139 Fed., 549; T. D. 26492), the Circuit Court of Appeals for the Second Circuit had before it the question as to whether cheap, flimsy ornaments in the form of buckles, slides, cabochons and bars, made wholly of base metal or of such metal set with imitation jet or imitation precious stones were or were not known commercially, commonly, or in any sense, as jewelry under paragraph 434 of the tariff act of 1897. The Board of General Appraisers held they were not jewelry, was sustained by the Circuit Court for the Southern District of New York, and further sustained by the Circuit Court of Appeals in the case cited. The jewelry paragraph of that act was not as specific with reference to buckles and slides as is that of the present act. It will be noted in that opinion buckles and slides were enumerated and passed upon together and therefore considered like articles.

The paragraph, however, refers to and covers merchandise "valued above 20 cents per dozen pieces." The appraiser in his answer to the protests stated:

All the articles on the above two invoices are valued at above 20 cents per dozen pieces, with the exception of Nos. 1043 and 1185 on invoice 286, which are valued at less than 20 cents per dozen pieces if a single buckle is considered a unit. It has been the practice of this office to consider a pair as a unit in such cases.

Counsel for the United States in his brief makes the following statement:

As to the goods which the appraiser speaks of as being valued at less than 20 cents per dozen pieces, it is perhaps doubtful whether they can be brought within paragraph 356.

As the statute has placed a duty of 60 per cent ad valorem on the merchandise mentioned in paragraph 356 when "valued above 20 cents per dozen pieces," it would logically follow that articles of less value are not within this paragraph, and that they should pay a lower rate. As these cheaper articles are not specially provided for in any paragraph of the act of 1913, we believe that, where they are worth less than 20 cents a dozen pieces, they properly fall within paragraph 167.

The protests are sustained as to the merchandise valued at less than 20 cents per dozen pieces, and overruled in all other respects. The collector's decision is modified and reliquidation will follow accordingly.

No. 36879.—JEWELRY.—Protests 725935, etc., of Morris Vogel & Bro. (New York), Opinion by Sullivan, G. A.

Cohn *v.* United States (4 Ct. Cust. Appls., 378; T. D. 33536) followed as to merchandise commonly known as jewelry.

No. 36880.—RESIN.—Protests 724087, etc., of J. Warren Bird et al. (New York and Boston).

BROWN, *General Appraiser:* The appraiser's report says that—

The merchandise described on the invoice as fused Malaysian resin was shown on analysis to consist of probably a melted resin containing 0.90 per cent insoluble matter, vegetable and mineral.

It was classified for duty as a gum resin advanced in value or condition at one-fourth of 1 cent per pound and 10 per cent ad valorum under paragraph 20, act of 1909. It is claimed to be free of duty under paragraph 559 as a drug, such as resin, not advanced in value or condition by any process of treatment whatever beyond that essential to the proper packing of the drug.

It is shown by the testimony that the latex, or sap, is taken from the jelutong tree, which occurs in Borneo, in the Malay Peninsula, and produces rubber, and the first stage in the process is to remove the material (marked "illustrative Exhibit A"), with heat and the use of a chemical, probably acetone, so that the resin thus comes off as a by-product. In that form the importer had imported it for some time. Later, to prevent it rotting the bags, it was melted into the form as imported (Exhibit 1), and in that condition brought into the country. As thus imported it does not sell for a higher price, as the importer hoped it would, but sells for less, because, to be used, it has to be ground again in the form of illustrative Exhibit A, and the question is whether the treatment above described removes it from the provisions of paragraph 559.

The United States chemist, who reported that it was probably melted resin, stated that it will take a high temperature—about 212°—to melt it, and that such melting drives off the water; that there would be no other effect resulting unless it was heated to a very high degree.

In these circumstances it does not seem that it is advanced in value or that anything commercially practical has been done to it beyond the preparation for proper packing or transportation, and we therefore sustain the claim under paragraph 559.

In fact, the gum resin treated of in United States *v.* Sheldon & Co. (2 Ct. Cust. Appls., 485; T. D. 32245) would seem to have been treated at least as much as, if not more than, the resin here in dispute, and in that case it was held to be free as a crude drug.

In protest 744610, covering an importation entered at the port of Boston, which was submitted on the same record, the sample shows that the merchandise is crude white resin, not even melted; and it, of course, should also be free. This protest arises under the act of 1913, but the provisions in the two acts are substantially the same as affecting the issue here involved.

Protests sustained.

No. 36881.—OPIUM.—Protest 606460 of Merck & Co. (New York). Opinion by Brown, G. A.

Certain opium was held dutiable as crude under the provisions of paragraph 41, tariff act of 1909, on the authority of Merck *v.* United States (5 Ct. Cust. Appls., —; T. D. 34549).

No. 36882.—FISH IN OIL.—Protest 664747 of Jed. Frye & Co. (New York). Opinion by Brown, G. A.

On the authority of Smith *v.* United States (5 Ct. Cust. Appls., —; T. D. 34008) fish packed in oil was held properly classified under paragraph 270, tariff act of 1909.

No. 86883.—Fish in Tins.—Protest 652774–42553 of Ben T. Hoskins & Bro. (Chicago), protests 437404, etc., of the John M. Chapman Co. (New York), and protests 593159, etc., of G. W. Sheldon & Co. et al. (New York et al.). Opinions by Brown, G. A.

United States *v.* Smith (4 Ct. Cust. Appls., 70; T. D. 33312), and United States *v.* Haaker (4 Ct. Cust. Appls., 471; T. D. 33884), followed as to fish in tins.

Before Board 2, November 18, 1914.

No. 86884.—Jewelry Boxes of Silk Velvet and Wood.—Protest 750193 of D. S. Hesse & Bro. (New York). Opinion by Howell, G. A.

Jewelry boxes composed of wood sides lined with silk velvet, classified as silk velvet under paragraph 314, tariff act of 1913, were held dutiable as manufactures of silk (par. 318), as claimed.

No. 86885.—Silk Velvet—Hatters' Plush.—Protest 727229 of Zucker & Josephy (New York). Opinion by Howell, G. A.

Merchandise classified as silk velvet under paragraph 399, tariff act of 1909, was claimed dutiable as hatters' plush (par. 477). Protest overruled.

No. 86886.—Wearing Apparel in Part of Lever Lace.—Protests 683822–43328, etc., and 705715–44628, etc., of Mandel Bros. (Chicago), and protests 656341, etc., of Rosenthal & Grotta (New York). Opinions by Howell, G. A.

Altman *v.* United States (5 Ct. Cust. Appls., —; T. D. 34251) and Steiner *v.* United States (5 Ct. Cust. Appls.,—; T. D. 34428) followed as to wearing apparel made wholly or in part on the Lever or Gothrough machine classified under paragraph 350, tariff act of 1909, and claimed dutiable under paragraph 349. Protests sustained in part.

No. 86887.—Mousseline Bands, Appliquéd.—Protests 436606, etc., of Wertheimer Bros. (New York). Opinion by Howell, G. A.

Mousseline bands classified under paragraph 399, tariff act of 1909, were held dutiable as manufactures of silk under paragraph 403. Mousseline bands, appliquéd, were held dutiable under paragraph 402. United States *v.* Wertheimer (2 Ct. Cust. Appls., 515; T. D. 32249) and United States *v.* Caesar (3 Ct. Cust. Appls., 214; T. D. 32533) followed.

Before Board 3, November 18, 1914.

No. 86888.—Value of Currency—Certificate of Depreciation.—Protest 730047 of James Beattie (Galveston).

Waite, *General Appraiser:* The merchandise is an importation of palm-leaf hats from Mexico, and the question raised by the protest is the value at which the Mexican currency shall be converted into United States currency. The goods were entered as of a value of $1,219 foreign money, $607 Federal money. This conversion is on the basis of the Mexican dollar or peso being worth $0.498 in United States money, the rate proclaimed by the Secretary of the Treasury (T. D. 33758) for the quarter during which these goods were purchased. The importer states that at the time of purchase the rate of exchange in effect was $1 in Mexican to $0.357 United States currency. In order to allow a margin for fluctuation, the importer adopts 37 cents as the value of the Mexican dollar, and asks that the entry be reliquidated on this basis, making a total value of $451.

No testimony has been offered; in fact, no appearance was made on behalf of protestant when the case was called for hearing. However, a question of depreciated currency is clearly raised by the protest.

It is provided by Consular Regulations of 1896, article 692 (as amended by Executive order of the President, dated March 10, 1902, T. D. 23725), that when the currency paid for purchased merchandise is depreciated a currency certificate on form No. 144 must be attached to the invoice showing the percentage of depreciation as compared with the corresponding standard coin currency and the value in such standard coin currency of the total amount of the depreciated currency paid for merchandise included in the invoice.

The importer in this case has not furnished such certificate. The regulation provides that "in the absence of a currency certificate no allowance will be made for depreciated currency." The board has held that this regulation must be strictly complied with. See G. A. 3514 (T. D. 17252) and G. A. 6066 (T. D. 26448).

Paragraph 692 of the consular regulations in question, while recently amended by Executive order in some other respects, is reenacted in respect to the necessity of furnishing certificate of depreciation. See T. D. 34542.

The protest is overruled.

BEFORE BOARD 1, NOVEMBER 20, 1914.

No. 36889.—LENGTH OF GLOVES.—Protest 745799 of Wm. H. Stiner & Son (New York). Opinion by McClelland, G. A.

Gloves returned by the appraiser as measuring 25½ inches in length were claimed to measure only 24 inches without stretching. Protest overruled because of the provision in paragraph 361, tariff act of 1913, that "the lengths stated in each case being the extreme length when stretched to their full extent."

No. 36890.—LAVA STONE.—Protest 736734 of Wilfred Schade & Co. (Richmond). Opinion by McClelland, G. A.

Protest overruled as to lava stone classified under paragraph 81, tariff act of 1913. United States *v.* Manufacturers' Paper Co. (4 Ct. Cust. Appls., 110; T. D. 33390) followed.

No. 36891.—PINCUSHIONS, COTTON CHIEF VALUE.—Protests 686255–43619, etc., of Sears, Roebuck & Co. (Chicago). Opinion by McClelland, G. A.

Certain pincushions classified as artificial flowers under paragraph 438, tariff act of 1909, were held dutiable as manufactures of cotton (par. 332), as claimed. Protests sustained in part.

No. 36892.—TRIPLICATE MIRRORS, ETC.—TOYS.—Protest 720397 of Adolph Strauss & Co. (New York). Opinion by Sullivan, G. A.

Articles classified as mirrors under paragraph 109, tariff act of 1909, were claimed dutiable as toys (par. 431). Protest overruled.

SULLIVAN, *General Appraiser:* * * * An inspection of the exhibits in evidence discloses that Exhibit 2 is a circular mirror in a tin case ornamented on the back with a representation of a watch dial about 1½ inches in diameter, and that Exhibits 1, 3, and 4 are so-called triplicate mirrors in tin cases ornamented on the back with pictures and having a chain by which the mirror can be suspended. Each of the mirrors in Exhibit 1 is about 3 by 3⅞ inches; in Exhibit 3, 2½ by 3½ inches; and in Exhibit 4, the side mirrors 1⅞ by 1⅜ inches, and the center mirror 2⅝ by 1⅞ inches.

The appraiser in his answer to the protest states that this merchandise "consists of mirrors of practical use," and although from the testimony quoted it would seem it is at times sold by toy houses and to people who use it in making small doll houses for children, yet from the testimony it is evident the merchandise is capable of practical use, and nowhere is the statement of the appraiser contradicted.

It is true that in the matter of protest 12010h of Samstag & Hilder Bros. (G. A. 5526; T. D. 24869), certain cheaply made up triplicate mirrors, measuring 3 by 4

inches or less, were held dutiable as toys; that similar mirrors exceeding those dimensions were held dutiable as mirrors; and that the mirrors covered by the case at bar measure less than 3 by 4 inches; but the Court of Customs Appeals in Illfelder *v.* United States (1 Ct. Cust. Appls., 109; T. D. 31115) has stated:

In common speech, and as popularly understood, a toy is essentially a plaything, something which is intended and designed for the amusement of children only, and which by its very nature and character is *reasonably* fitted for no other purpose.

That coincides with our view, and approving that decision we would not be justified in reversing the collector's action.

No. 36893.—Mirrors—Triplicate Mirrors.—Protests 559401 and 623168, etc., of B. Illfelder & Co. et al. (New York and Philadelphia). Opinions by Sullivan, G. A.

Protests overruled as to mirrors and triplicate mirrors classified under paragraph 109, tariff act of 1909. G. A. 7533 (T. D. 34200) cited.

No. 36894.—Fan Chains—Jewelry—Imitation Precious Stones.—Protests 718406, etc., of the American Bead Co. (New York). Opinion by Sullivan, G. A.

Chains composed of glass beads having a snap attached for fastening to fans or other articles were held properly classified under paragraph 421, tariff act of 1909, and not dutiable as toys (par. 431). Small black crosses of gallilith were held dutiable as jewelry or parts thereof under paragraph 448. Cohn *v.* United States (4 Ct. Cust. Appls., 378; T. D. 33536) followed. Foil-backed rhinestones having a translucent white glass or paste back or base with two holes pierced through the base from side to side were held properly classified as beads under paragraph 421. Rhinestones set in a cup of black or blue paste, and pear shaped faceted articles made of yellow transparent glass or paste, pierced from end to end, were held dutiable as imitation precious stones, as claimed. Protests overruled as to strings of graduated imitation pearl beads classified under paragraph 421. Lorsch *v.* United States (5 Ct. Cust. Appls., —; T. D. 34132) followed.

No. 36895.—Bath Tablets—Toilet Articles.—Protests 723475, etc., of Adams Express Co. (Boston).

Brown, *General Appraiser:* The appraiser says in his report:

The merchandise subject of protest, invoiced as antiseptic bath tablets, was returned for duty as a toilet preparation, at the rate of 60 per cent ad valorem under paragraph 67, act of 1909.

Paragraph 67 reads:

Perfumery, including cologne and other toilet waters, articles of perfumery, whether in sachets or otherwise, and all preparations used as applications to the hair, mouth, teeth, or skin, such as cosmetics, dentifrices, including tooth soaps, pastes, including theatrical grease paints and pastes, pomades, powders, and other toilet articles * * * if not containing alcohol, * * * sixty per centum ad valorem.

The principal claims made in the protest are under the provision in paragraph 65, reading:

All other medicinal preparations not specially provided for in this section, twenty-five per centum ad valorem,

and under paragraph 3 as a chemical compound, mixture, or salt, at 25 per cent ad valorem.

The sample in evidence consists of a small package of tablets which have a strong perfume and wrapped in a cover on which is printed—

Dr. Stohr's Bath Tablets with natural floral perfumes. These tablets are manufactured of the best ingredients, ordorize and disinfect the bath water, and produce

lasting purity and freshness of the skin. Can be used as sachet in your closet. These tablets will dissolve at once and give the water a refreshing perfume and odorize and soften the skin.

The witness for the importer, general manager of the Dr. Stohr Pharmaceutical Co., testified that these tablets are composed of borax, boracic acid, tartaric acid, citric acid, and a few other chemical ingredients of a disinfecting nature, and that they are slightly scented; that they disinfect and purify the water and have a cooling, healing effect on the skin, and that they are specially recommended for irritated skin, eruptions, etc., on grown people and babies. He admitted that, although a chemist himself, he did not know anything about the medicinal properties of these tablets, but he claimed that anyone, medical man or not, would know that tartaric acid concentrates the pores and by that means prevents superfluous perspiration and that boracic acid neutralizes hard water.

The Government chemist analyzed the article, and his analysis shows (record, p. 9) that the tablets contain talc, starch, soda, tartaric acid or citric acid, coloring matter, and perfume.

We think it is plain from the above statements concerning the sample itself and the constituents contained in this article that it is not in common speech a medicinal preparation, but that it is an article of perfumery of the kind meant to be covered by the words "articles of perfumery whether in sachets or otherwise." What medicinal properties it may have would evidently, on the face of it, be very slight as compared with its use as a bath perfume.

We are not unmindful of our decision in Abstract 26104 (T. D. 31757), where Waltat Foot Wash, having a curative effect on corns, callouses, and chilblains, was held to be a medicinal preparation. We think that case is distinguishable from the case at bar, but if not, it is, so far as in conflict, modified.

The protests are overruled.

No. 36896.—Wool Rugs—Blankets.—Protest 703968 of Stern Bros. (New York).

Brown, *General Appraiser:* The appraiser reports—

The merchandise consists of so-called blankets. As this merchandise is also known as woolen rugs or auto rugs, it was returned as a manufacture of wool at 44/55, paragraph 378, act of 1909.

It is claimed that the merchandise is blankets and properly dutiable at 33 cents per pound and 40 per cent ad valorem under paragraph 379, tariff act of 1909.

From the testimony and an examination of the sample we find the merchandise consists of blankets, the importer testifying that they were used as bed blankets or couch blankets; that lap robes or automobile robes (which he also deals in) are manufactured from cloths that are woven much wider, such as broadcloth or whipcords, plushes, and goods of that character; and that the goods in question are not sold or intended to be used as automobile or lap robes.

The appearance of the sample shows a delicate white, fluffy material, made up to all appearance as a blanket is made up and of a texture so fine as to negative the idea of its use as an automobile rug and tending to corroborate the contention of the importer in that regard.

We hold, therefore, on this testimony and record, that the merchandise in question is not automobile rugs.

It would be sufficient to rest our decision here, but in addition, following our finding in our recent decision upon protest 721319, we hold that a blanket does not cease to be a blanket if used in an automobile or carriage to keep the cold from the body, instead of upon a bed or upon the back of a horse.

And so holding we sustain the protest.

No. 36897.—Silk and Wool Hats.—Protest 744817-48123 of G. W. Sheldon & Co. (Chicago). Opinion by Brown, G. A.

Men's hats composed of silk and wool, imported during the continuance of the old wool schedule, were held properly classified under paragraph 382, tariff act of 1909. G. A. 7578 (T. D. 34600) and Hecht *v.* United States (5 Ct. Cust. Appls., —; T. D. 34444) followed.

No. 36898.—Fish in Tins—Fish in Oil—Fish Balls—Kippered Herrings.—Protests 729905, etc., of the Swedish Produce Co. (Boston), protest 458780 of J. S. Brown & Bro. Mercantile Co. (Denver), and protests 678593, etc., of A. Gips, protests 501954, etc., of C. S. Netter et al., protests 694954, etc., of A. H. Ringk & Co., and protests 697781, etc., and 733457 of Strohmeyer & Arpe Co. et al. (New York). Opinions by Brown, G. A.

United States *v.* Miller (5 Ct. Cust. Appls., —; T. D. 34443), Smith *v.* United States (5 Ct. Cust. Appls., —; T. D. 34008), Benson *v.* United States (4 Ct. Cust. Appls., 467; T. D. 33882), and United States *v.* Rosenstein (1 Ct. Cust. Appls., 304; T. D. 31357) followed as to fish in tins, fish in oil, fish balls, and kippered herrings.

Before Board 3, November 20, 1914.

No. 36899.—Tender of Entry—Delivery of Manifest.—Protest 729141 of Parke, Davis & Co. (Detroit).

Waite, *General Appraiser:* This case has been submitted on the record, without testimony or brief. It appears from a perusal of the record that the merchandise is gum arabic, which arrived at the port of New York on August 18, 1913, and was shipped in bond under immediate transportation entry to Detroit, where it arrived September 19, but without bonded manifest accompanying the billing. Protestant states that the collector at Detroit would not accept entry without production of manifest; that they were not able to get duplicate manifest from the collector at New York, and that on that account entry was delayed till November 21, 1913, at which time the collector classified the gum arabic under the specific provision therefor in paragraph 36, tariff act of 1913, carrying a duty of one-half of 1 cent a pound. Protestants' claim is that it should have been granted free entry as a crude drug under paragraph 559, tariff act of 1909, and that but for the above-mentioned delay it would have been so classified. It would therefore appear that the importers claim they should be allowed the same standing as though the goods had been entered under the law of 1909. They base this claim upon the fact that they were willing to enter the goods, but were prevented from doing so by the failure of the Government officials or the shipper to produce the manifest. It evidently was the carrier's duty to deliver the manifest to the collector at Detroit. We have grave doubts whether the importers could shift to the Government the responsibility of delivering the manifest to the collector at Detroit, as the carrier would be considered their agent. At all events, they would not be entitled to the benefit of an entry if they had not tendered one in a proper and legal manner. Because of their failure in this regard, we can grant them no relief, as there is no proof on their part that they did tender an entry under the law of 1909. Note Van Treese *v.* United States (2 Ct. Cust. Appls., 288; T. D. 32036).

The protest is overruled.

No. 36900.—Stipulation to Dismiss.—Protests 656036, etc., of Wm. A. Brown & Co. et al. (New York).

Hay, *General Appraiser:* In each of these cases a stipulation has been entered into by and between the Assistant Attorney General and the attorneys for the importers that the protest may be dismissed. The board evidently has jurisdiction of the

cases and there is no apparent reason for the dismissal of the protests. The records, however, afford no ground upon which the protests could be sustained or reliquidation of the entries ordered. The protests are therefore overruled without affirming the action of the collector.

No. 86901.—JEWELRY.—Protest 731191 of Strauss Bros. & Co. (New York). Opinion by Hay, G. A.

Hairpins set with imitation precious stones were found to be commonly known as jewelry and held dutiable accordingly under paragraph 448, tariff act of 1909. Cohn *v.* United States (4 Ct. Cust. Appls., 378; T. D. 33536) followed.

No. 86902.—JOSS STICKS.—Protests 703232, etc., of Wm. A. Brown & Co. et al. (New York). Opinion by Hay, G. A.

Joss sticks classified under paragraph 480, tariff act of 1909, were held entitled to free entry (par. 599). Abstract 35623 (T. D. 34459) followed.

(T. D. 34921.)

Drawback on condensed milk.

Drawback on condensed milk manufactured by Wisconsin Condensed Milk Co., of Burlington, Wis., with the use of either imported refined sugar or refined sugar produced from imported raw sugar.

TREASURY DEPARTMENT, *November 24, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on condensed milk manufactured by the Wisconsin Condensed Milk Co., of Burlington, Wis., at their factories located at Burlington, Wis., Pecatonica, Ill., and Grayslake, Ill., with the use of either imported refined sugar or refined sugar produced from imported raw sugar.

The quantity of refined sugar which may be taken as a basis for the payment of drawback shall not exceed the quantity appearing in the exported condensed milk with a maximum of the quantities specified in the sworn statement of the manufacturers, dated November 9, 1914, which is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(103025.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34922.)

Drawback on hats.

Drawback on blocked, blocked and bleached, and blocked, bleached, and trimmed hats manufactured by Pattison & Co. (Ltd.), of New Orleans, La., with the use of imported untrimmed hat bodies.

TREASURY DEPARTMENT, *November 24, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations

(T. D. 31695 of June 16, 1911), on blocked, blocked and bleached, and blocked, bleached, and trimmed hats manufactured by Pattison & Co. (Ltd.), of New Orleans, La., at their New York City factory with the use of imported untrimmed hat bodies.

The allowance shall not exceed one imported untrimmed hat body for each blocked, blocked and bleached, or blocked, bleached, and trimmed hat exported.

The sworn statement of the manufacturers, dated November 11, 1914, is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(102821.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34923.)

Cigars made in bonded manufacturing warehouse.

Inscriptions to be placed on cigar stamps on cigars made in bonded manufacturing warehouse from imported tobacco.

TREASURY DEPARTMENT, *November 27, 1914.*

To collectors of customs and others concerned:

The department has concluded, after careful consideration of the briefs submitted and oral representations made by various parties interested in the manufacture of cigars in bonded warehouse, that sufficient reason does not exist to justify a departure from the previous rulings made relating to the inscription placed upon stamps to indicate the character of such cigars, as required by the provisions of subsection M of section 4 of the tariff act of October 3, 1913.

The department will therefore continue to furnish such stamps upon application therefor, with appropriate wording to show the place of manufacture, the origin of the tobacco from which made, and the character of the cigars according to the method of manufacturing the same.

(100576.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 34924.)

Drawback on tin cans.

T. D. 14592 of January 26, 1894, extended to cover tin cans manufactured by the Standard Oil Co. of New Jersey with the use of imported lead and tin.

TREASURY DEPARTMENT, *November 27, 1914.*

SIR: The department's regulations of January 26, 1894 (T. D. 14592), providing for the payment of drawback on 5-gallon rectangular tin cans manufactured by the Standard Oil Co. of New

York with the use of imported pig tin and lead, are hereby extended to cover 1 and 5 gallon tin cans manufactured by the Standard Oil Co. of New Jersey with the use of either wholly imported lead or imported and domestic lead in combination with domestic or imported pig tin or a mixture of imported and domestic pig tin.

The sworn statement of the manufacturers, dated November 9, 1914, is transmitted herewith for filing in your office. The sworn statement of the manufacturers, dated May 9, 1914, is now on file in your office.

Respectfully, ANDREW J. PETERS,
(98979–1.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34925—G. A. 7639.)

Ship's equipment.

1. SEA STORES DEFINED.
The term "sea stores" embraces only articles for the use and consumption of the passengers and crew of a ship upon its voyage.

2. SHIP'S EQUIPMENT DEFINED.
The term "ship's equipment" embraces such articles as are necessarily used upon a ship and do not form a part of its sea stores and are not necessary for its propulsion or navigation.

3. SHIP'S EQUIPMENT—STEAM WINCHES.
Steam winches used in removing freight to and from the hold of a ship at ports not having a dock equipped with winches are ship's equipment within the meaning of that term as used in section 2797 of the Revised Statutes, as amended by section 17 of the act of March 3, 1897.

4. "UNDER THE SUPERVISION OF A CUSTOMS OFFICER"—SUBSTANTIAL COMPLIANCE.
The examination after transfer by a customs officer of certain steam winches transferred from one vessel of a steamship line to another vessel of the same line, after application to the collector for free entry under the provisions of section 17 of the act of March 3, 1897, fulfills the useful purpose of and is a substantial compliance with that provision of section 17 which provides that the transfer shall be under the supervision of a customs officer.

United States General Appraisers, New York, November 24, 1914.

In the matter of protest 705236 of W. G. Sickel against the assessment of duty by the collector of custom at the port of New York.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

HAY, *General Appraiser:* Eight steam winches were brought into the port of New York by the Hamburg-American Steamship Co. on their steamship *Pretoria.* The testimony shows that they were brought in for the purpose of being placed upon and becoming a part of the machinery or equipment of the steamship *Carl Shurz* and the steamship *Emil L. Boas,* two steamships that were detained in the port of New York, both of which belong to the Hamburg-American

Steamship Co., and that the eight winches were placed on these ships to be used in loading and unloading their cargoes at ports where the ships do not land at piers equipped for this work. The winches in question were assessed for duty under what, if they were dutiable at all, is conceded to be the proper paragraph of the tariff law. The importer, however, contends that they should be admitted free of duty under section 2797 of the Revised Statutes, as amended by section 17 of the act of March 3, 1897. This section as amended reads as follows:

> * * * Sea stores and the legitimate equipment of vessels belonging to regular lines plying between foreign ports and the United States delayed in port for any cause may be transferred in such port of the United States under the supervision of the customs officers from one vessel to another vessel of the same owner without payment of duties, but duties must be paid on such stores or equipments landed for consumption, except American products.

From the collector's report upon the protest he refuses free entry upon the ground that the articles in question did not come within the purview of the regulations made for the administration of section 5 of the Panama Canal act, being the act of August 24, 1912 (37 U. S. Stat., 560; T. D. 32956). The provision which the collector evidently had in mind reads as follows:

> * * * That all materials of foreign production which may be necessary for the construction or repair of vessels built in the United States and all such materials necessary for the building or repair of their machinery and all articles necessary for their outfit and equipment may be imported into the United States free of duty under such regulations as the Secretary of the Treasury may prescribe.

The collector either misunderstood the claim of the importer or was under the impression that the above provision from the Panama Canal act repealed or modified section 2797 of the Revised Statutes as amended, *supra*. This provision has no relation to or bearing upon the case now under consideration, as it relates entirely to ships built in the United States. The question for us to decide is: Are the eight steam winches in question entitled to free entry under the provisions of section 2797 as amended. To come within the purview of this provision of law, the articles in question must be either sea stores or the legitimate equipment of a vessel belonging to a regular line plying between the United States and a foreign port, which vessel has been delayed in a port of the United States, and the articles in question must have been brought to the United States in a vessel of the same line as the vessel to which they are to be transferred. It is further provided by this law that the articles thus imported must be transferred from the carrying vessel to the vessel upon which they are to be used under the supervision of a customs officer. The steamship *Pretoria*, upon which the winches were brought from Europe, is of the same line as the steamship *Carl Schurz* and the steamship *Emil L. Boas*, upon which the winches were to be used.

The steamship *Carl Schurz* and the steamship *Emil L. Boas* were vessels plying between the United States and foreign ports. All this is clearly shown by the record.

The winches in question are not sea stores, as it is fairly well settled that "sea stores" embrace only such articles as are for the use and consumption of the passengers and crew of a vessel upon its voyage. United States *v.* Twenty-three Coils of Cordage (28 Fed. Cas., 290).

Upon the question as to what is meant by legitimate equipment of a vessel, both the decided cases and the lexicographic authorities are singularly silent. The question seems never to have been definitely adjudicated. The testimony in this case of witnesses of broad experience and wide knowledge in the equipment and management of ships is to the effect that such articles as are necessarily used upon a ship, and do not form a part of the sea stores of the vessel and are not necessary for its propulsion or navigation, are known as ship's equipment. This conclusion would seem to be in line with such reference as may be found to the general subject in the various decided cases, although, as heretofore stated, we are unable to find any case directly in point. The testimony further shows that the winches are not in any sense used in propelling or navigating the ship; that they are not necessarily a part of the ship, and are used only to remove freight to and from the hold of the ship at ports not having a dock equipped with winches. We have no difficulty, therefore, in concluding that the winches in question are a part of the "legitimate equipment" of the vessel upon which they were placed, within the meaning of that term as contained in the statute under which the claim of free entry is made. There remains, however, to be determined the question whether or not the winches were transferred from the steamship *Pretoria* to the steamship *Carl Schurz* and the steamship *Emil L. Boas* under the supervision of a customs officer.

The testimony of the witness who made the entry for the steamship company in this case discloses, we think, that at the time he made application to the collector for the transfer of the winches free of duty from the steamship *Pretoria* to the steamship *Emil L. Boas* and the steamship *Carl Schurz*, he presented to an authorized subordinate of the collector a letter making such request. The collector apparently denied this privilege to the importer's representative, but exactly what was done by the collector with reference to the request for a transfer does not definitely appear from the record. Application was then made to the Treasury Department, which was also denied, after which entry was made upon a pro forma invoice. The deposit to cover the estimated duties was made, and apparently the articles in question, being then free from customs custody, were transferred by the steamship company, the record being silent as to whether at the time of immediate transfer there was a customs

officer present. The following indorsement is to be found upon the entry, and was doubtless made by the importer's representative at the time of entry:

Examination under machine bond, winches now set up on board the steamships *Emil L. Boas* and *Carl Schurz*, four winches on each steamer, both vessels at Erie Basin Dry Docks, Brooklyn.

There is also an indorsement upon the entry bearing date two days ater as follows:

The steamship *Carl Schurz* having been moved to her loading berth at pier 65 North River, examination under machinery bond is hereby respectfully requested at that place in lieu of Erie Basin Dry Docks.

Following this is a memorandum approving the same, signed "E. M. R. for the Law Division."

The pro forma invoice upon which the entry was made bears the following indorsements:

After special bond is filed and preliminary examination on wharf, with the concurrence of the appraiser and if the cords and seals of packages so ordered hereon have not been broken, may be examined at—steamship *Emil L. Boas*, Erie Basin Dry Dock; steamship *Carl Shurz*, pier 65 N. R.

(Signed) F. A. COLLINS, *D. C.*

Mdse. as noted.
Exam. at Erie Basin.
Exam. at Pier 65, North River.
April 4, 1913.

A. E. S.

From these indorsements it is clear that a customs officer has examined the winches, having seen them upon the boats for which they were imported and to which they were transferred.

Without deciding that the transfer of articles of this character under the supervision of a customs officer, as provided by law, must under all circumstances be treated as a condition precedent to the right of free entry, we think the above notations to be found upon the invoice and entry and the application for such transfer, as shown by the testimony, was a substantial compliance so far as an importer could comply with that provision of law. The examination of the winches by a customs officer on the boats to which they were transferred serves, we think, every useful purpose of the provision of law which requires the transfer under the supervision of a customs officer, if it is not in effect such a transfer, as it could hardly be held that the physical presence of a customs officer at every minute of time during the process of transferring would be essential to such compliance. This requirement is intended to safeguard the privilege given by this law from abuse; that is, to make sure that articles brought in under its provisions were actually transferred to the vessel for which they are alleged to have been intended. This is effectually

done by the examination of them by a customs officer after they are so transferred.

There is authority, we think, that would support us in holding that the application which the importers made and which was apparently refused by the collector, would itself, independent of the other facts we have narrated, entitle them to the right of free entry. In the case of United States *v.* Legg (Circuit Court of Appeals, Second Circuit, 105 Fed., 930) it was held that, where an importer attempted to comply with the provisions of law relative to the entry of merchandise and was entitled to make the entry and presented himself at the proper collector's office and offered to enter the merchandise and pay the duty, the collector could not deprive him, by his arbitrary refusal to receive and file the papers, of the rights which would accrue upon the making of such entry. That case was followed upon principle by the board in Courtin, Golden & Co., G. A. 5293 (T. D. 24265). If we applied the principle of this case to the facts of the case at bar, the collector could not, by failing or refusing to assign a customs officer to supervise the transfer of the winches, deprive the importer of such rights as the law gives him.

The protest is sustained and the collector directed to reliquidate the entry admitting the winches free of duty.

(T. D. 34926—G. A. 7640.)

Protest fee.

FORM OF TENDER OF PAYMENT.

Where an importer paid $35 fees which he intended to apply on three protests, and in tendering the payment did not mention the number of the protest here in question (one of the three), *Held* that such tender was unnecessary, for the reason that, under the rule established and made known by the department, tender in that form would not have been received.—Swift *v.* United States (111 U. S., 30) and United States *v.* Lee (106 U. S., 202) cited.

United States General Appraisers, New York, November 24, 1914.

In the matter of protest 753603 of Wm. A. Brown & Co. against the assessment of duty by the collector o customs at the port of New York.

Before Board 1 (McCLELLAND, SULLIVAN, and BROWN, General Appraisers; McCLELLAND, G. A., concurring).

BROWN, *General Appraiser:* The main question in this case relates to the sufficiency of payment of protest fees on this and two other protests.

The protest bears the indorsement:

Fee not paid on this protest, but paid on another protest against the same entry.

The importer paid $35 and claims to have done so in the following circumstances:

As stated in the testimony, the collector's number of the protest here in question is 41373 (board's No. 753603). There was also a protest against the assessment of duty on so-called salted beans, which is collector's No. 41375, and is now pending before board 3, the board's number being 753601. The other protest is No. 39217 (collector's number)—that is, the 5 per cent discount question—and under instructions from the Treasury Department the collector is holding this last protest in his office. It therefore has no board number.

No. 39217 (no board number) was lodged on May 7, No. 41375 (board No. 753601) was lodged on May 13, and No. 41373 (board No. 753603), the protest here in issue, was lodged on May 13.

On June 5, $35 was paid, the importer claiming that this was the least amount of money the collector would accept in order to validate the protest, following the department's ruling. The department numbers referred to are T. D. 33817 and T. D. 33956. Further the importer's witness, who handled the filing of these protests, testified:

Q. Aside from any departmental instructions, will you please state what interpretation or what practice the collector enforced in the matter of the payment of the fees on lodged protests?—A. This action of the collector refers to the method in which this fee of $35 which was to validate these particular protests should be paid, and we were not allowed in making the tender of money to mention in any tender more than one protest. In other words, while the collector would accept those $35 in payment of the three protests, and forward them all to the board, at the same time he would not permit us to put on one tender any more than one protest number. So, accordingly, in order to spread the payment over among these three protests as far as we could, we paid $34 on protest 39217.

Q. You mean that your tender allocated that $34 to that particular protest?—A. Where we made the tender of $34 we were only permitted to mention one protest number, not all the protests on the entry, although the fee was sufficient to cover all the protests. We mentioned 39217; as there were three protests on this entry, we paid $1 besides, as we had to, in order to validate protest 39217, but mentioned 41375, and in that way the collector considered that the three protests were covered by the payment, but he would not on our tender permit us to mention the third protest. That is the difficulty that we were laboring under.

Q. With whom did you have a conversation as to your right to mention more than one protest number in any tender?—A. Mr. O'Connor and Mr. Allendorf, a number of times before the lodging of this particular protest and since.

Q. Will you tell us what they told you?—A. That the money would not be received.

Q. Unless what?—A. The money would not be received if it mentioned more than one protest.

The importer's attorney did not make the formal tender upon this protest here at issue.

In paying the $35 with the other protests he did not mention the one at bar (known as collector's No. 41375, board No. 753603), which he intended by such payment to cover also, claiming that such

action was unnecessary in view of the previous statements made to him by the Government officials that they would not take the money if he tendered it in that form, and this fact is substantiated by the Government witnesses, who admit that under the department's instructions they would not have taken it, and that they so informed everybody.

We hold that such formal tender was unnecessary in these circumstances and the case must be decided as if it had been made.

The Supreme Court said in Swift *v.* United States (111 U. S., 22, p. 30):

> A rule of that character, deliberately adopted and made known and continuously acted upon, dispenses with the necessity of proving in each instance of conformity that the compliance was coerced. This principle was recognized and acted upon in United States *v.* Lee (106 U. S., 200), where it was held that the officers of the law, having established and acted upon a rule that payment would be received only in a particular mode, contrary to law, dispensed with the necessity of an offer to pay in any other mode, and the party thus precluded from exercising his legal right was held to be in as good condition as if he had taken the steps necessary by law to secure his rights.

Again in United States *v.* Lee (106 U. S., 196, 202):

> It is a general rule that when the tender of performance of an act is necessary to the establishment of any right against another party, this tender or offer to perform is waived or becomes unnecessary when it is reasonably certain that the offer will be refused.

We therefore hold a sufficient sum was paid to validate the three protests, that a particular tender under this number being unnecessary it was in effect paid upon all three, and the protest here involved is valid.

As to the merits of the classification as fish packed in oil in tin boxes, etc., under the first clause of paragraph 216, act of 1913, as against the claim under the second clause of said paragraph at 15 per cent as all other fish in tin packages, we find as a fact from the chemist's reports that the fish is not packed in oil and therefore sustain the protest under that claim.

As to the other claims they are in effect abandoned and no evidence was introduced in support of them.

CONCURRING OPINION.

McCLELLAND, *General Appraiser:* The issues in this case are clearly set forth by my associate, General Appraiser Brown. The only question which appears to me to merit discussion is that involving the validity of the protest, or, in other words, whether by reason of an arbitrary practice prevailing in the collector's office, which has since been declared by the Court of Customs Appeals in United States *v.* McCoy Co. (5 Ct. Cust. Appls., —; T. D. 34445) to have been without warrant in law, protestants shall be held to have lost their right to

have the decision of the collector in assessing duties on the merchandise involved reviewed by this board.

The practice of the collector referred to and complained against was based upon instructions received from the Secretary of the Treasury, published as T. D. 33817, as follows:

The department is in receipt of your letter of the 14th instant, in which you state that a firm of customs brokers has notified you that it intends to consolidate a number of entries in one protest in order to avoid the payment of the protest fee required in paragraph N of section 3 of the act of October 3, 1913.

Paragraph N expressly provides that the decision of the collector shall be final and conclusive "unless the owner, importer, consignee, or agent shall file a protest in writing * * * setting forth therein distinctly and specifically and in respect to each entry or payment the reason for his objections."

The department is of the opinion that a so-called protest covering a number of different entries and payments and raising numerous questions relating to different importations would not comply with the requirements of the statute cited.

The department is further of the opinion that the decision of a collector of customs against which protest may be made under said paragraph is the liquidation of an entry; that an expression of dissatisfaction with such liquidation constitutes a protest; and that the fee provided is chargeable upon each protest, even though a number of protests be included in one paper or document.

You will therefore forward protests to the Board of United States General Appraisers only upon the payment of a fee of $1 for each liquidation protested against.

The Assistant Attorney General in charge of customs cases has been requested to object to the validity of each so-called protest when the liquidation of more than one entry is included in one paper or document, on the ground that the same does not distinctly and specifically set forth the reason for the objections in respect to each entry or payment.

It appears from the record that subsequent to the promulgation of these instructions to the collector protestants were required to make formal tender of payments of protest fees, specifying in such tenders the entries, by numbers, intended to be covered thereby, and that the protest fees were exacted not upon the basis of the number of the protests filed with the collector but upon the number of entries covered thereby. If these instructions were contrary to the requirements of the statute, the fact that they emanated from the Secretary of the Treasury does not validate the collector's action nor deprive protestants of their lawful rights.

The collector's number of the protest in question is 41373, and it appears from the testimony of the witness O'Connor, who was in charge of the protest bureau in the collector's office at the time it was filed, that it could have been validated by the protestants placing opposite protest collector's number 39217 the entry number 312686. Against the liquidation of entry number 312686 three protests were filed—one, collector's number 39217 on May 7, 1914, and the other two, collector's numbers 41373 and 41375, filed May 13, 1914; but, under the practice prevailing, protestants were not allowed to specify in a tender of payment of protest fees any more than one

protest number, and hence 41373 was omitted from the tender made with 39217. The tender of $34 was made and accepted with protest 39217. This protest covered 39 entries, but with the $34 thus tendered was credited $5 theretofore deposited as fees upon five of such 39 entries. This satisfied the requirements of the collector's office that $1 protest fee be paid to cover each of the said 39 entries.

The witness Brown, who made this tender and lodged the three protests above referred to, testified that in conversations with Deputy Collector Allendorf and the witness O'Connor, who was in immediate charge of the receipt of protests, he was repeatedly told that money in payment of protest fees would not be received if the tender, which was required to be in writing, specified more than one protest.

One effect of this practice was that, as in the case of protest 39217, *supra*, where payment of $39 was required, if protestants desired further to protest against such exaction by the collector, $39 additional would have to be paid, and similar payments might have been required so long as protestant desired to continue protesting against what they deemed to be the illegal exaction of such protest fees by the collector.

At one point in his testimony the witness O'Connor was asked—

Q. Suppose we had given you $3 to cover these three protests we have been mentioning, would you have accepted?—A. No, sir.

Q. Would you accept it now?—A. Yes, sir.

There can be no dispute but that protestants had paid to the collector at the time of the filing of these protests much more than sufficient money to cover the fees warranted by law to be collected, and I am firmly of the opinion that protestants had deposited with the collector sufficient moneys to cover the protest in question and that in so far as they were permitted to do so they had complied with the statute.

Subsequent to the filing of the protest involved the question of the right of the collector to require the payment of a protest fee for each entry covered by a protest was tried before the Board of General Appraisers, and it was held that the exaction of more than $1 by the collector on the filing of a protest, regardless of the number of entries it covered, was illegal and without warrant in law (G. A. 7515; T. D. 33981), and this view of the board was, on appeal to the Court of Customs Appeals, subsequently affirmed in United States *v.* McCoy Co., *supra*, and the practice in the office of the collector was thereafter changed to conform to the views therein expressed.

The witness O'Connor was further asked—

Q. Then, subsequent to the decision of the court, you got instructions from the Treasury Department which, following the new ruling, made the protest valid and a balance of $32 overpaid?—A. $32 overpaid; that is correct.

I am decidedly of the opinion that the collector under the statute should have applied, out of the moneys deposited, $1 on each of the three protests mentioned, and that the protest in question was validated regardless of the form of the tender protestants were arbitrarily required to make.

I concur in the conclusion of General Appraiser Brown as to the validity of the protest, as well as upon the merits of the other issues presented.

(T. D. 34927—G. A. 7641.)

Protest fee.

1. APPLICATION OF EXCESS DEPOSIT IN THE HANDS OF THE COLLECTOR.

Money deposited with the collector by a protestant as a protest fee under the provisions of paragraph N of section 3 of the act of 1913 in excess of the amount lawfully required should not be applied by the collector as payment of a fee on another protest unless he is especially directed so to do by the protestant making the deposit.

2. WAIVER OF TENDER.

The law does not require a man to do an unnecessary thing, and where the tender of performance or payment is essential to the establishment of a right and it is well and generally known that the tender would be refused and the right denied, that tender is waived and is unnecessary to the establishment of that right.—Hills *v.* Exchange Bank (105 U. S., 319); United States *v.* Lee (106 U. S., 196); Bank *v.* Hagner (1 Peters, 455).

3. WAIVER OF PROTEST FEE.

It being well known that the collector would not accept a protest fee on certain classes of protests, the offer or tender of such fee was unnecessary to the validation of such protests.

4. ARBITRARY ACTS OF THE COLLECTOR.

The collector can not, by arbitrarily refusing the fee required by law upon the filing of a protest, deprive the protestant of his right, even though the collector's action is the result of a mistaken interpretation of the law.—United States *v.* Legg (105 Fed., 930); Courtin, Golden & Co.'s case, G. A. 5293 (T. D. 24265).

United States General Appraisers, New York, November 24, 1914.

In the matter of protests 737487, etc., of Meyer & Lange *et al.* against the assessment of duty by the collector of customs at the port of New York.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

HAY, *General Appraiser:* These cases are all submitted upon a motion made by the Assistant Attorney General to dismiss for want of jurisdiction. The contention is made by that official that no fee was paid upon the filing of the protests under consideration, and that none was paid thereafter within the statutory period; hence, under the law, the protests must be treated as "finally abandoned and

waived." So much of the statute as is pertinent is to be found in the following provision of paragraph N of section 3, act of 1913:

> Such protest shall be deemed to be finally abandoned and waived unless within thirty days from the date of filing thereof the person who filed such notice or protest shall have deposited with the collector of customs a fee of one dollar with respect to each protest.

The protests bear a rubber-stamp indorsement as follows:

> Fee not paid on this protest, but paid on another protest against same entry.

This is not signed and might be treated as of no official or probative force were it not for the fact that at the hearing the exact situation with reference to the particular protests before us seems to have been conceded by the representatives of the Government and of the importers. From the testimony of witnesses and the statement of counsel a rather complicated state of facts seems to have existed with reference to the payment of fees upon protests at the collector's office during the period of time when the protests in question were filed. In deciding so close a question as is presented by this motion we would have preferred that the testimony with reference to the practice prevailing in the collector's office were a little more explicit. The exact principle of law that must control the decision does not seem to have been definitely in the minds of counsel.

Upon certain other protests covering the same entries and covering other entries in addition to those covered by these protests the protestants paid a fee equivalent to $1 for each entry covered thereby. The protests in question in this case were filed against the liquidation upon certain of the entries that were covered by the protests last above referred to, and in which a fee of $1 for each entry was paid. The protests, however, relate to different merchandise, present different issues and different grounds of dissatisfaction with the action of the collector. It has, since this fee was paid or deposited, been definitely determined by the board and the Court of Customs Appeals that a fee of $1 is all that the law contemplates. *In re* McCoy, G. A. 7515 (T. D. 33981); United States *v.* McCoy Co. (5 Ct. Cust. Appls., —; T. D. 34445). Therefore, an exaction by the collector of a sum in excess of $1 is an unlawful exaction. It is clear that the sums paid in excess of $1 upon each protest were payments or deposits in excess of that which the law requires, and the money thus paid or deposited is money in the hands of the collector which belongs to the protestants.

If, however, the protestants were to rely upon this fact and contend that the collector should apply the money in his hands which he had collected in excess of the lawful fee or deposit to the payment of the fee or making of the deposit upon the protests here under consideration, their position, we think, would not be a sound one, for,

without special direction from them, the collector would not be authorized to make such application or any other application of that excess money in his hands. The record does not show that the collector has ever been directed by the protestants to apply this excess money to the payment of the fee or deposit on the protests in question.

There is, however, testimony which tends to show, and while the statements of witnesses are not entirely clear, if we place the right construction upon it, conclusively shows, that there was a practice in the office of the collector, which it is said resulted from the instructions given by the Assistant Secretary of the Treasury, which rendered the payment of the fee or deposit or the offer or tender of the same unnecessary in order to make the protests in question valid. It would seem that in the collector's office the entry rather than the protest was treated as the unit; that is, where a protest was made by an importer, covering, for illustration, six entries, the collector required a deposit of $6 upon the filing of that protest in order that the same might be considered valid. If the same importer should file five additional protests covering five of the entries covered by the former protests upon which he had paid the deposit of $6, but with reference to different items in the invoice covered by these entries, and presenting a different issue and a different ruling of the collector with which he was dissatisfied, the collector would not accept or receive a deposit on any of these protests, but would place thereon the stamp above referred to. This well-defined practice, known to the importer and known to all importers, relieves, we think, the protestant in this case from the obligation of tendering the fee or deposit required by law. The law does not require a man to do an unnecessary thing. It is a rule of law well settled that, in transactions between individuals, where the tender of performance or payment is essential to the establishment of a right, and it is well and generally known that the tender would be refused and the right denied, the tender is waived and is unnecessary in order to the establishment of that right. We know of no decided case or general principle which takes the Government or its officers outside of the operation of this rule, and in some instances it has been applied to a public officer. Hills *v.* Exchange Bank (105 U. S., 319); United States *v.* Lee (106 U. S., 196); Bank *v.* Hagner (1 Peters, 455); American and English Encyclopedia of Law (vol. 28, p. 5); Ansley *v.* Hightower (120 Ga., 719); Blair *v.* Hamilton (48 Md., 32); Williams *v.* Triplett (3 Iowa, 518); Piazzek *v.* Harman (79 Kans., 855); State *v.* Webster Parish Police Jury (120 La., 163; 14 L. R. A. N. S., 794).

If we have interpreted the evidence in this case correctly, the rule of the collector's office, acting under the instructions of the Treasury Department, would have rendered an offer to deposit a fee of $1 in

the case now before us both an idle and useless ceremony. It must be treated, therefore, as if the deposit of the fee had been offered and refused by the collector. The citizen can not be deprived of the rights given him under the law by the arbitrary unlawful action of a public official, even though that action is the result of a mistaken interpretation of the law. United States *v.* Legg (105 Fed., 930); Courtin, Golden & Co.'s case, G. A. 5293 (T. D. 24265).

From the record in the case at bar we are satisfied that the importer had both the ability and the willingness to deposit the fee that is required by law, and that he knew from previous experience and from conversations with authorized deputies of the collector that the collector would not accept the deposit of the fee upon these protests. The protests therefore stand in exactly the same relation as had the fee been deposited, and hence are valid.

We therefore hold that the protests in question are valid, and the motion to dismiss is denied.

(T. D. 34928—G. A. 7642.)

Stained or painted glass windows for house of worship.

1. STAINED OR PAINTED GLASS WINDOWS FOR HOUSE OF WORSHIP—WHEN EXCLUDED FROM FREE ENTRY.

Stained or painted glass windows, in part mechanically wrought from metal within 20 years before importation and imported to be used in houses of worship, are dutiable under the provision in paragraph 95, tariff act of 1913, for "stained or painted glass windows," and are not free of duty under paragraph 655 as "works of art, * * * including * * * stained or painted glass windows imported to be used in houses of worship," being excluded from the latter paragraph by the proviso therein, which reads, "excluding any article in whole or in part molded, cast, or mechanically wrought from metal within twenty years prior to importation."

2. SAME—INCORPORATION OF HOUSE OF WORSHIP.

Under the provision of paragraph 655, granting free entry to works of art, including stained or painted glass windows to be used in houses of worship, it is not necessary that the house of worship be incorporated.

United States General Appraisers, New York, November 27, 1914.

In the matter of protest 736183 of Theo. Rose against the assessment of duty by the collector of customs at the port of New York.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

WAITE, *General Appraiser:* The entry in this case covers "nineteen cases stained glass windows." It is claimed they should be free of duty under paragraph 655, tariff act of 1913, as being imported for presentation to a church. They were assessed at 30 per cent ad valorem under paragraph 95, which provides for "stained or painted glass windows, or parts thereof."

The affidavit and letters of presentation and acceptance required by the Treasury regulations (art. 720, Customs Regulations of 1908) were filed on entry in accordance therewith. It appears, however, that the church for which said windows were imported is not incorporated, and the Government objects to free entry on this ground, and also on the further ground that the provision in paragraph 655 excluding "any article, in whole or in part, molded, cast, or mechanically wrought from metal within twenty years prior to importation" removes these windows from the purview of the paragraph, inasmuch as they are admitted to be in part of metal mechanically wrought and produced within 20 years prior to importation.

Paragraph 655 reads as follows:

655. Works of art, productions of American artists residing temporarily abroad, or other works of art, including pictorial paintings on glass, imported expressly for presentation to a national institution or to any State or municipal corporation or incorporated religious society, college, or other public institution, including stained or painted window glass or stained or painted glass windows imported to be used in houses of worship, and excluding any article, in whole or in part, molded, cast, or mechanically wrought from metal within twenty years prior to importation; but such exemption shall be subject to such regulations as the Secretary of the Treasury may prescribe.

The corresponding paragraph of the law of 1909 (par. 716) reads as follows:

716. Works of art, productions of American artists residing temporarily abroad, or other works of art, including pictorial paintings on glass, imported expressly for presentation to a national institution, or to any State or municipal corporation or incorporated religious society, college, or other public institution, except stained or painted window glass or stained or painted glass windows, and except any article, in whole or in part, molded, cast, or mechanically wrought from metal within twenty years prior to importation; but such exemption shall be subject to such regulations as the Secretary of the Treasury may prescribe.

It will be noted that the word "except" in paragraph 716 preceding the words "stained or painted window glass or stained or painted glass windows" has been changed in paragraph 655 to "including," and that the words "imported to be used in houses of worship" have been added in paragraph 655; also that the succeeding word "except" in paragraph 716 has been changed to "excluding" in paragraph 655.

With these changes noted, we have paragraph 655 of the present law providing for substantially the same kind of merchandise that was provided for in paragraph 716 of the law of 1909. As the law now stands it provides for the free importation of works of art produced by American artists residing temporarily abroad, and "other works of art," which shall include pictorial paintings on glass when imported expressly for presentation to certain institutions, municipal corporations, incorporated religious societies, etc.; and it also pro-

vides for the free importation of stained or painted window glass or stained or painted glass windows when imported to be used in houses of worship, excluding any article in whole or in part molded, cast, or mechanically wrought from metal within 20 years prior to importation.

It is suggested that if stained or painted glass windows which are in whole or in part molded, cast, or mechanically wrought from metal within 20 years are to be excluded from the paragraph, it will have the effect of excluding practically all importations of glass windows from free entry.

That it would have that effect should not deter us from construing the law as in our judgment it should be construed. We are of the opinion that paragraph 655, as enacted in the law of 1913, was a compromise between those who argued for free importation for the benefit of churches and houses of worship and those who argued that the domestic industry of manufacturing such goods should be protected; and it was concluded, as we read the law, that stained or painted glass windows made more than 20 years before importation should be admitted free, together with stained or painted window glass; but that stained or painted glass windows which were in part molded, cast, or mechanically wrought from metal, the manufacture of which now constitutes a considerable industry in the United States, should be excluded if manufactured within 20 years prior to importation, thus saving and protecting the industry as it now stands.

We learn, from an inspection of an illustrative sample and from the testimony, that the windows here in question are manufactured by joining pieces of stained or painted glass by means of lead strips as sash, making connection between the pieces of glass, the whole being bound upon the outside by a strip of the same metal. This metal as found in the windows, according to the undisputed testimony and evidence in the case, is wrought mechanically, and hence, in our judgment, the windows come directly under that part of the paragraph which excludes in terms any article so wrought.

The decision of the collector was made upon the theory that these windows could not be imported free under paragraph 655, because the church for which they were imported was not an incorporated religious society. Under this statute we hold that it is not necessary that stained or painted window glass or stained or painted glass windows be imported expressly for presentation to an incorporated religious society to entitle them to free entry, as we are of the opinion that the following provision in the paragraph allows artistic window glass and glass windows of such description to be imported free if they are to be used in houses of worship. We think this a consistent construction of this statute from the well-known fact that consider-

able controversy had arisen over the importation of such windows under the previous law, it being claimed that a discrimination was made by reason of the fact that many churches, notably Catholic churches, throughout the United States, were not incorporated.

We therefore conclude that the windows should be classified as stained or painted glass windows; we find that they were imported to be used in a house of worship; at the same time, we conclude that they were in part mechanically wrought from metal within 20 years prior to importation, and for that reason they must be refused free entry. The protest is therefore overruled on that ground.

(T. D. 34929—G. A. 7643.)

Lithographic print of an oil painting on cotton cloth not a work of art.

Paragraph 376 of the act of 1913 provides for works of art, including paintings in oil or water color, etc., or copies, replicas, or reproductions thereof. A lithographic print of an oil painting is not a work of art, nor is it even a copy of a painting in oil, within the meaning of said paragraph. To measure up to the standard of a work of art, a copy thereof should be a literal imitation or duplicate of the original.

United States General Appraisers, New York, November 27, 1914.

In the matter of protest 732492 of American Express Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers; COOPER, G. A., dissenting).

FISCHER, *General Appraiser*: The merchandise in question consists of pieces of cotton cloth or canvas 21 inches in width by 33 inches in length, each piece having lithographically printed thereon a picture which the importers allege is a copy of some well-known work of art, the particular representative sample before us being claimed to be a reproduction of the original famous oil painting by Murillo known as the Madonna or the Immaculate Conception. The present tariff provision for lithographic prints (par. 325) being plainly restricted to such as are composed wholly or in chief value of paper, the articles under consideration were accordingly assessed with duty at the rate of 30 per cent ad valorem under paragraph 266 of the act of 1913 as manufactures of cotton not specially provided for. The sole claim alleged in the protest is that said prints are properly dutiable under paragraph 376 of said act, which paragraph reads as follows:

376. Works of art, including paintings in oil or water-colors, pastels, pen and ink drawings, or copies, replicas or reproductions of any of the same, statuary, sculptures, or copies, replicas or reproductions thereof, and etchings and engravings, not specially provided for in this section, 15 per centum ad valorem.

From a mere reading of this paragraph it will be readily observed that the subject matter thereof is absolutely confined to "works of art," because the specifications which immediately follow that provision, beginning with the word "including," are clearly words of limitation rather than of extension and were evidently incorporated therein by Congress merely out of an abundance of precaution.

It necessarily follows, therefore, that, unless the articles here in controversy are conclusively shown to be works of art of the specific character mentioned in said paragraph, they certainly can find no place therein.

Now, it is too clear for argument that a picture lithographically printed on cotton cloth is not a painting in oil or water colors, nor is it a pastel, nor a pen-and-ink drawing, nor an etching, nor an engraving; and we are equally satisfied that it is neither a copy, a replica, nor a reproduction of any of the foregoing articles. By the simple reasoning of elimination, therefore, the prints in question would be excluded from the provisions of said paragraph.

Nor does the fact that etchings and engravings are mentioned in said paragraph militate against this view, for there are etchings and engravings made from hand-etched or hand-engraved plates which are conceded to be genuine works of art. This, however, can hardly be claimed for similar articles made by the photochemical or other mechanical processes.

Paragraph 652 of the free list in said act provides for "original paintings in oil, mineral, water, or other colors, pastels, original drawings and sketches in pen and ink or pencil, and water colors, artists' proof etchings unbound, and engravings and woodcuts unbound, original sculptures or statuary, including not more than two replicas or reproductions of the same; * * *."

Paragraph 376 makes provision for articles of the same general character and made in the same way as those mentioned in said paragraph 652, with the single exception that they lack the feature of originality. In other words, said paragraph 652 provides for paintings in oil or water colors, etc., which are originals, while paragraph 376 provides for paintings in oil or water colors, etc., which are copies of the originals.

The record in the case at bar falls far short of establishing that the official sample of the merchandise in evidence is even a lithographic print of the original painting of Murillo's Madonna. On this point the sole witness who appeared for the importers testified as follows:

Q. Did the man who made this copy take it from a copy, or from the original itself?—A. I can't say that.

Q. You don't know that?—A. No.

The words "copy," "replica," and "reproduction," as defined by lexicographers, we think support our view of what Congress intended by the use of those words in said paragraph 376.

Standard Dictionary:

Copy.—I (1) To make a copy of; make an imitation or duplicate; reproduce, as in writing, painting, drawing, needlework, etc. (2) To follow as a model; imitate, pattern after.

II (1) To make an imitation or reproduction. A reproduction or imitation, as of a writing, printing, drawing, painting, or other work of art, so as to have another or others similar to the original; duplicate; as a copy of the Sistine Madonna.

Replica.—Fine arts. A duplicate executed by the artist himself, and regarded, equally with the first, as an original.

Reproduce.—To produce again; bring forward or exhibit afresh; reintroduce. To make a copy of; as to reproduce a subject for illustration by photography.

Century Dictionary:

Copy.—A duplication, transcription, imitation, or reproduction of something; that which is not an original. Specifically—a completed reproduction or one of a set or number of reproductions or imitations, containing the same matter, or having the same form and appearance, or executed in the same style, as an exemplar; a duplicate.

Replica.—A work of art made in exact likeness of another and by the same artist, differing from a copy in that it is held to have the same right as the first made to be considered as an original work.

Reproduce.—To bring forward again; produce or exhibit anew. To make a copy or representation of; portray, represent.

Webster's Dictionary:

Copy.—A writing like another writing; a transcript from an original. One of a series of imitations or repetitions of an original work. To write, print, or engrave after an original; to imitate; to make an imitation.

Replica.—Fine arts. A reproduction, facsimile, or a copy, as of a picture or statue, especially one by the maker of the original and assumed to be of equal value.

Reproduce.—To produce again; to cause to be or seem to be repeated; to repeat; to make an image, a copy, or other representation of; to portray. To reproduce its kind.

If a copy of an original work of art is an imitation or duplicate thereof, it would seem that such copy should be at least a literal reproduction of the original, made from the same materials and executed in the same manner. Hence a copy of a painting in oil should likewise be executed in oil or a copy of a marble statue should also be reproduced in marble.

Manifestly such was the intent of Congress in enacting said paragraph 376. It was evidently intended to make provision therein for the character of work produced by students who frequent the art galleries of the world for the purpose of copying the great works of the masters, it being the congressional intent that an ad valorem duty of 15 per cent should be collected on such copies, while the original works of the masters should be accorded free entry.

If the contention of the importers were to be held to be well founded, then anything and everything which purported to be a representation

of some well-known work of art, irrespective of its method of production or of the purpose for which it was destined to be employed would be properly classifiable as a work of art and subject to duty as such under paragraph 376.

In addition to defeating the congressional intent, such construction would inevitably lead to the most absurd results, for it is a matter of common knowledge, and a fact of which the board is undoubtedly entitled to take judicial notice, that many of the common articles of utility which are daily employed are constructed or formed in imitation of some well-known work of art. There are metal articles which are supposed to represent the statues of Ariadne, Venus, The Dying Gladiator, and other characters that are employed as paperweights, bottles, etc., while lithographic prints in unlimited quantities, which are supposed to portray the works of eminent artists whose paintings are on exhibition in the art galleries of the world, are frequently circulated gratuitously as advertising mediums in the form of calendars, wall pockets, posters, etc. It need hardly be stated that Congress never intended to extend to such articles the same consideration as it has always shown toward genuine works of art or copies thereof, particularly as most of those articles of utility or so-called works of art make no pretensions whatever to artistic merit.

Again, Gobelin tapestries are well known works of art, but it would be just as absurd to hold photographic or lithographic prints thereof, howsoever artistically embellished in color or accurate in detail and design, to be copies of such tapestries and entitled therewith to the same dutiable consideration as works of art as it would be to hold lithographic prints of paintings in oil to be properly dutiable as copies, replicas, or reproductions of such paintings and with them equally entitled to be classified as works of art.

It will be noted that there are no less than three provisions in the tariff act of 1913 for etchings and engravings. Paragraph 652 admits to free entry artists' proof etchings and engravings that are printed by hand from plates or blocks etched or engraved with hand tools, and not such as are printed from plates or blocks etched or engraved by photochemical or other mechanical processes. Paragraph 376 admits to entry at 15 per cent ad valorem those etchings and engravings which are works of art not elsewhere specially provided for. These, as above indicated, are such as are made from hand-etched or hand-engraved blocks, but which are not artists' proofs nor printed by hand. Finally, paragraph 329 provides for etchings and engravings, which would include the commercial engravings and etchings made by the photochemical or other mechanical processes. In this view the presence of a provision in paragraph 376 for etchings and engravings does not open the paragraph to lithographic prints.

The protest is accordingly overruled and the decision of the collector is affirmed.

DISSENTING OPINION.

COOPER, *General Appraiser:* I disagree with the conclusions reached by the majority of the board in this case. From the testimony and from common knowledge, it is clear that the sample in evidence is a copy or reproduction of one of the world's famous paintings and works of art, and if the reproduction itself rises to the dignity of a work of art, it is my opinion that it should be classified under paragraph 376.

The witness for the importers was positive that the sample is an accurate reproduction of the original, and his testimony is not weakened by the fact that he did not know whether it was copied from the original itself or from a copy of the original He testified:

Q. Do you know the original work from which this is copied?—A. Murillo's Madonna.

Q. Have you seen the original?—A. No; it is well known, though.

Q. Do you know whether this is a copy of the original, or a copy of a copy, or replica?—A. It is a reproduction of the original.

Q. You are quite sure of that ?—A. Yes, sir.

Q. How do you know it?—A. It is so well known all over the world that anyone would recognize it instantly as Murillo's Immaculate Conception.

It is my opinion that it is immaterial whether it is a copy from the original itself or a copy made from another copy; so long as it accurately represents the original it is a copy or reproduction of the same. This construction would not throw the paragraph open to such articles as paper weights, bottles, calendars, wall pockets, posters, etc., supposed to portray works of eminent artists, as stated in the majority opinion of the board, because such articles of utility do not rise to the dignity of "works of art," while calendars, wall pockets, and posters are specially provided for as lithographic prints composed wholly or in chief value of paper under paragraph 325.

In the board's decision the word "copy," quoted from Webster's Dictionary, is defined as "one of a series of imitations or repetitions of an original work." The articles in question clearly come within that definition, for it can not be denied that the sample before us is "one of a series of imitations," and it is conceded that the original is a work by an eminent artist.

In the Standard Dictionary definition of the word "reproduce," quoted in the board decision, an illustration as to the meaning of the word is given as "to reproduce a subject for illustration by photography." If photographs are reproductions, concededly lithographs, which are usually produced in part by a photographic process, are also reproductions, and this very definition shows that a reproduction of an oil painting need not necessarily be made in oil, for it plainly authorizes such reproduction by photography, which is purely a mechanical process quite different from the method of

producing paintings in oil. If the articles in question were photographs, they would be dutiable at 15 per cent ad valorem under paragraph 329, wherein they are specially provided for.

In the New Oxford Dictionary, published in 1910, the word "copy" is defined as—

A picture, or other work of art, reproducing the features of another. Something made or formed, or regarded as made or formed, in imitation of something else; a reproduction, image, or imitation.

The word "reproduction" is defined as—

A copy or counterpart; in recent use *esp.* a copy of a picture or other work of art by means of engraving or some other process. b. A representation in some form or by some means of the essential features of a thing.

The board holds that a "copy of a painting in oil should be executed in oil and a copy of a marble statue should also be reproduced in marble," but the dictionaries do not sustain that theory, for the definition above quoted clearly states that a reproduction is "a copy of a picture or other work of art" made "*by means of engraving or some other process.*" Nor do the dictionary definitions sustain the theory that a copy or reproduction must be taken from the original itself, for the only requisite of a copy or reproduction seems to be that the image or imitation shall present the essential features of the original thing, whether it be produced by the same method as the original or by a different method.

In the case of *In re* Griffin, G. A. 7632 (T. D. 34905), the board held that certain plaster casts were free of duty as "statuary and casts of sculpture for use as models or for art educational purposes" under paragraph 611 of the act of 1913. It appears from the decision that the casts as imported were intended to be used as models to form molds from which other casts in plaster were to be produced. The board applied the term "reproductions" to these models and also to the casts produced from the models, although none of them was produced in the same materials as the originals or copied from the same. The board said:

Among them we find reproductions, which appear to be genuine works of art, of Mars Ludovisi, the original of which is in Florence; the Esquiline Venus, in Rome; Giuliano and Lorenzo de Medici, by Michael Angelo, in Florence, as well as busts of Tennyson and Dickens.

The word "replica" is defined in the dictionaries as a duplicate made by the artist who executed the original, but the word is often used in the sense of a copy which reproduces the essential features of a thing, made by an artist other than the one who originally executed the production, and in another or different manner and material. In G. A. 1694 (T. D. 13314) the board held that a bronze statue was a work of art. The board described the article as "one

of a number of *replicas* cast after the same model." The model was made out of plaster, while the replicas, so called, were made out of bronze. In G. A. 1282 (T. D. 12633) the board, in describing a lecturn for a church, the classification of which was in question, said:

> The article is about 5 feet in height and of the width of a large open Bible, is made wholly of brass, is of the eagle design, and is reputed to be a *replica or copy* of an old lecturn which was found some hundred years ago in a morass or lake in England, and is now in a cathedral at Southwell.

This so-called replica could not have been made by the same artist who executed the original.

Paragraph 376 provides for "paintings in oil or water colors" and also for "copies, replicas, or reproductions of the same." The board seems to be of opinion that copies, replicas, or reproductions of paintings must be in oil or water colors in order to come within the terms of the paragraph; but if that were true, the terms "copies, replicas, or reproductions" would have no application, for if a copy or reproduction of a painting was made in oil or water colors it would come within the designation "paintings in oil or water colors," thus leaving nothing for "copies, replicas, or reproductions" to operate upon. In order to give effect to the provision for "copies, replicas, or reproductions," we must hold that the term "paintings in oil or water colors" refers to either originals or copies, if made in oil or water colors, while the term "copies, replicas, or reproductions" refers to copies made by any other method of production. Under the construction given the paragraph by the board, the words "copies, replicas, or reproductions" are mere surplusage, and one of the axioms of statutory interpretation is that effect should be given to all parts of the statute.

Protestants claim that duty should have been imposed at the rate of 15 per cent ad valorem under paragraph 376, the pertinent parts of which are as follows:

> 376. Works of art, including paintings in oil or water colors, pastels, pen and ink drawings, or copies, replicas or reproductions of any of the same, * * * and etchings and engravings.

Before articles can be classified under this paragraph it must first be determined that they are works of art within the recognized meaning of that term. In Harper *v.* United States (172 Fed., 289; T. D. 29806) the court held that fashion-plate drawings that possessed some artistic merit, but were purely for practical and utilitarian purposes, were not "works of art" within the meaning of paragraph 703 of the act of 1897, and following that decision the board, in Abstract 23608 (T. D. 30734), held that a collection of water-color drawings intended for illustrations in a magazine were not entitled to free entry as "works of art." In Young *v.* Bohn (141 Fed., 471; T. D. 26392), however,

an architect's pen-and-ink drawings, showing the design of a building intended as an art museum, were held to be "works of art." It is not contended that the articles in question are for utilitarian purposes. They are suitable and no doubt are intended for framing in the same manner as a painting in oil or water colors. Nor can it be said that they are not works of art because they are copies. In G. A. 6255 (T. D. 26987) the board said:

We do not think a copy is necessarily excluded from classification as a work of art. All works of art are more or less copies. What we call originals are copied either from nature or from forms which have taken shape in the mind of the artist, induced by actual things idealized and perfected through his imagination. We do not think the law requires that *objets d'art* shall be originals, so called.

In Morris European & American Express Company *v.* United States (85 Fed., 964), Judge Townsend, speaking for the court, said:

If the proportions are sufficiently symmetrical and the lines so far free from faults as to stir the emotions of people, the work is to them a work of art. Whether it is good or bad art is a mere question of quality.

It may be argued that these pictures are not "works of art" because they were produced by a mechanical process, but I am of opinion that there is no force in this contention. In G. A. 2942 (T. D. 15842) the board described lithography as follows:

Lithography is the act of making pictures or designs upon stone, and sometimes on metal, and of producing such impressions by a process analogous to ordinary printing. This printing is often done by a lithographic hand or power press, which is a mechanical process.

It is noted that "etchings and engravings" are included among the "works of art" enumerated in paragraph 376. An etching is described in the Standard Dictionary as—

1. A process of engraving in which the incised lines are produced by the biting of an acid or mordant. The surface of the metal is covered with a thin coat of wax, asphaltum, or varnish, which is scratched with the etching needle where lines are desired and the exposed part subjected to the acid.
2. An impression from an etched plate.

Engraving is described as—

1. The act, process, or art of producing by cutting on metal, stone, or wood either incised or relief designs, as for ornamentation or printing.
4. A picture or design printed from an engraved plate.

It appears from these definitions that etchings and engravings are made in a manner similar to the production of lithographs, that is by the mechanical process of pressing engraved, etched, or lithographic plates against the object upon which the picture or device is to be impressed. If etchings and engravings are considered by Congress to be "works of art," why do not lithographs rise to the same dignity, since they are produced by an analogous process? In paragraph 652

Congress has made provision for etchings and engravings "printed by hand from plates or blocks etched or engraved with hand tools." It is thus apparent that by admitting etchings and engravings made by hand to free entry, a strong inference must be taken that Congress intended that the etchings and engravings subject to duty under paragraph 376 are those produced by mechanical processes; and if such commodities are "works of art," surely lithographs produced by a similar process are likewise "works of art."

In United States *v.* Perry (146 U. S., 71), the United States Supreme Court gave a definition of "works of art," which shows that it is a broad term, including not only paintings and other articles belonging to the domain of high art, but also useful articles which are artistic in the sense of being beautiful and which require a high degree of artistic merit for their production, and are ordinarily classified among the decorative and industrial rather than among the fine arts. In that decision the Court said:

> For most practical purposes works of art may be divided into four classes:
>
> 1. The fine arts, properly so called, intended solely for ornamental purposes, and including paintings in oil and water, upon canvas, plaster, or other material, and original statuary of marble, stone, or bronze. * * *
>
> 2. Minor objects of art, intended also for ornamental purposes, such as statuettes, vases, plaques, drawings, etchings, and the thousand and one articles which pass under the general name of bric-a-brac, and are susceptible of an indefinite reproduction from the original.
>
> 3. Objects of art, which serve primarily an ornamental and incidentally a useful purpose, such as painted or stained glass windows, tapestry, paper hangings, etc.
>
> 4. Objects primarily designed for a useful purpose, but made ornamental to please the eye and gratify the taste, such as ornamented clocks, the higher grade of carpets, curtains, gas fixtures, and household and table furniture.
>
> No special favor is extended by Congress to either of these classes except the first, which is alone recognized as belonging to the domain of high art.

In paragraph 652 Congress has provided free entry for "original paintings in oil, mineral, water, or other colors, pastels, original drawings and sketches in pen and ink or pencil and water colors, artists' proof etchings unbound, and engravings and wood cuts unbound, original sculptures or statuary, including not more than two replicas or reproductions of the same," but it specifies that the terms "painting," "sculpture," and "statuary," as used in the paragraph, "shall not be understood to include any articles of utility, nor such as are made wholly or in part by stenciling or any other mechanical process." All of this class of goods belongs to the domain of high arts or fine arts, as to which, as stated by the court in United States *v.* Perry, *supra*, Congress has extended special favors.

The history of this provision clearly shows the intent of Congress to broaden the scope of paragraph 376 of the tariff act of 1913. In the act of 1909 the provision that "the term 'painting' * * * shall be understood not to include such as are made wholly or in

part by stenciling or other mechanical process" was contained in paragraph 470, which corresponds to paragraph 376 of the act of 1913; but Congress omitted this provision from paragraph 376 and added thereto the words "or copies, replicas, or reproductions of any of the same," thus showing the intent to allow importations of a lower standard of art the benefit of this paragraph, the only limitation being that such articles must be "works of art." The *original* paintings and articles belonging to the class of high art were relegated to paragraph 652.

The provision under consideration should be liberally construed; and if there is any fair doubt as to the true construction the courts should resolve the doubt in the importer's favor.

It can not be denied that the original from which the picture in evidence was copied is a work of art. The sample before us is artistic and to the inexperienced eye is hard to distinguish from a painting in oil, and I am of opinion that it belongs to that broad class of articles known as "works of art." As I am also of the opinion that the pictures in question would come within the designation of "copies, replicas, or reproductions," I think they should have been classified under paragraph 376 and returned for duty at 15 per cent ad valorem.

(T. D. 34930—G. A. 7644.)

Embroidered hosiery.

1. EMBROIDERED HOSIERY.

Embroidered stockings, hose and half-hose are dutiable under paragraph 358, act of 1913, as "wearing apparel, * * * embroidered, * * * by whatever name known," and not under paragraph 260 as "stockings, hose, and half hose," etc.

2. SPECIFIC DESIGNATION.

The use of the phrase "by whatever name known" indicates the purpose of Congress to make the provision for embroideries in paragraph 358 so specific and all inclusive that it will include articles of the character therein specified, whether they are mentioned by name in another paragraph of the act or not.

United States General Appraisers, New York, November 28, 1914.

In the matter of protest 756604 of Lord & Taylor against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

COOPER, *General Appraiser:* The merchandise covered by this protest, as shown by the appraiser's report, consists of embroidered cotton stockings, hose or half hose, which are selvedged, fashioned, narrowed, or shaped wholly or in part by knitting machines or knit by hand. Duty was collected at the rate of 60 per cent ad valorem

under paragraph 358, act of 1913, the pertinent parts of which are as follows:

358. * * * Embroideries, wearing apparel, handkerchiefs, and all articles or fabrics embroidered in any manner by hand or machinery, whether with a plain or fancy initial, monogram, or otherwise, or tamboured, appliquéd, or scalloped by hand or machinery, any of the foregoing by whatever name known; * * *.

The importers claim that said merchandise is properly dutiable at 50 per cent ad valorem, or at the appropriate rate according to the value per dozen pairs, under the following provisions of paragraph 260:

260. Stockings, hose and half hose, selvedged, fashioned, narrowed, or shaped wholly or in part by knitting machines or frames, or knit by hand, including such as are commercially known as seamless stockings, hose and half hose, clocked stockings, hose and half hose, all of the above composed of cotton or other vegetable fiber, finished or unfinished; * * *.

The question presented, which is purely one of law, is as to the relative specificness of the two paragraphs. The Government argues that the articles are more specifically provided for under paragraph 358 than under 260, for the reason that the scope of the general provision for embroideries is broadened and made into a specific provision by the words "by whatever name known," so that it includes all embroidered articles of every description, whether specifically mentioned in the tariff act or not. The appraiser states:

In the opinion of this office, this phrase "by whatever name known" withdraws the stockings under consideration from the specific provisions of paragraphs 259 and 260 when embroidered.

We are of opinion that the point taken by the appraiser is well founded. In the case of Smith *v.* United States (5 Ct. Cust. Appls., —; T. D. 34008), wherein the collector classified certain salted or smoked herrings in oil as "fish (except shellfish) by whatever name known, packed in oil, in * * * tin boxes," and the importer claimed that they were more specifically provided for as "herrings, pickled or salted, smoked or kippered," the court held that, since the herrings came within the classification of "fish packed in oil, in tin boxes," the expression "by whatever name known" made the paragraph so comprehensive that it was more specific than that for "herrings," etc. Judge Montgomery, speaking for the court, said:

Now, in the present case we find language quite as comprehensive and it leaves no room for construction. "Fish * * * *by whatever name known*, packed in oil, in bottles, jars, kegs, tin boxes, or cans" is a phrase not difficult of comprehension or of application. When we find fish packed in oil in a tin can, there is no difficulty whatever in saying that it is described by the words quoted. When it is said that the present importation is herrings, and that the phrase does not employ that name, the answer is that while it does not employ the word "herrings," it does include herrings within its terms just as definitely and absolutely as if the word had been employed one or more times, for it includes fish, so conditioned, *by whatever name known*.

In the case of Mason *v.* Robertson (139 U. S., 627), wherein certain bichromate of soda had been classified as bichromate of potash by similitude, the court held that the merchandise was more specifically provided for as "all chemical compounds and salts, *by whatever name known*, and not specially provided for," and that the merchandise, coming within the designation "by whatever name known," could not be treated as a nonenumerated article and be subjected to the rules of the similitude clause. The court said:

> The designation "all chemical compounds and salts, by whatever name known," includes all chemical compounds and chemical salts, used then or thereafter in any science or art, as clearly as if the proper names of each and all of them had been given.

In the tariff act of 1897, paragraph 339 contained a provision for—

> Wearing apparel, handkerchiefs, and other articles or fabrics embroidered in any manner by hand or machinery, whether with a letter, monogram, or otherwise; * * *.

Said paragraph also contained the proviso—

> That no wearing apparel or other article or textile fabric, when embroidered by hand or machinery, shall pay duty at a less rate than that imposed in any schedule of this act upon any embroideries of the materials of which such embroidery is composed.

Under that act, in the case of Carter *v.* United States (143 Fed., 256; T. D. 27135), the United States Circuit Court of Appeals held that embroidered hosiery was dutiable under this paragraph by virtue of the proviso thereto. The same provisions, with slight changes, were reenacted in paragraph 349 of the act of 1909 and in Abstract 29311 (T. D. 32714), appealed to the United States Court of Customs Appeals, but dismissed by consent (T. D. 33415), the board held that embroidered hosiery was covered thereby. The proviso was not reenacted in the act of 1913, but Congress inserted the provision "by whatever name known" in the embroidery clause, and we are of opinion that it withdraws from the other paragraphs of this act all embroidered articles just as surely as did the proviso in the acts of 1897 and 1909.

In G. A. 7574 (T. D. 34547) the board, in a decision holding that metal-thread embroideries, galloons, ornaments, and trimmings were dutiable under paragraph 358 rather than as "fabrics or other articles made wholly or in chief value of tinsel wire," said:

> That this paragraph was intended by Congress to be an exhaustive enumeration of and an exclusive statutory provision for the goods and classes of goods therein named is manifest from a consideration of the language employed with particular reference to its emphasis.
>
> An example of this is found in the phrase which concludes the provision for laces, embroidered or appliquéd wearing apparel, etc., viz, "any of the foregoing *by whatever name known*."
>
> It is furthermore significant that paragraph 358 as a whole is not qualified by the phrase "not specially provided for," that limitation being attached only to certain of the subdivisions in the paragraph.

The correctness of the collector's classification is further supported by the fact that Congress has specially mentioned "clocked stockings" in paragraph 260. Clocking is a species of embroidery, G. A. 4715 (T. D. 22268), and as Congress has thus specially provided for this particular kind of embroidered stockings in paragraph 260 the intent is shown to exclude therefrom stockings embroidered in any other manner. As it is not shown that the merchandise in question is clocked stockings, following the authorities cited and for the reasons herein given, we hold that said merchandise is properly dutiable at 60 per cent ad valorem under paragraph 358.

The protest is overruled.

(T. D. 34931—G. A. 7645.)

Personal effects.

1. PERSONAL EFFECTS—ACT OF 1913.

Under the act of 1913, residents of the United States returning from abroad may bring into this country articles up to but not exceeding $100 in value acquired while abroad for personal or household use or as souvenirs or as curios, if not bought on commission or intended for sale.—Act of 1909 distinguished.

2. SAME—MOTION-PICTURE FILM.

A motion-picture film of the protestant flying in an aeroplane, not intended for sale but intended only to be shown to his friends, is an article acquired for personal use and a souvenir within the meaning of that word as used in paragraph 642 of the act of 1913.

United States General Appraisers, New York, November 28, 1914.

In the matter of protest 759889 of N. E. Newman against the assessment of duty by the collector of customs at the port of Cleveland.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

HAY, *General Appraiser:* The imported article the classification of which is the subject of this protest is a moving-picture film of the protestant in an aeroplane flying from Nice to Monte Carlo. The testimony shows that the protestant had the film in question made simply to show the picture to his friends, and that it was not intended to be used in an exhibit of any kind. It was assessed for duty under paragraph 380 of the tariff act of 1913, and is claimed by the protestant to be free under paragraph 642. Paragraph 642 is what is generally known as the personal effects or baggage paragraph of the tariff law. The film in question in this case did not accompany the protestant, as he states in his testimony it had not been developed when he left Europe, and it was forwarded to him after his return. The only objection urged by counsel for the Government is that the film in question did not accompany the protestant upon his return to this country.

A paragraph similar in purport to the one under which the claim is made is to be found in each of the tariff laws of recent years, but the tariff act of 1913 made a number of significant changes, two of which it is necessary to point out in the decision of this case. Paragraph 709 of the law of 1909 reads as follows:

709. Wearing apparel, articles of personal adornment, toilet articles, and similar personal effects of persons arriving in the United States; but this exemption shall only include such articles as actually accompany and are in the use of, and as are necessary and appropriate for the wear and use of such persons, for the immediate purposes of the journey and present comfort and convenience, and shall not be held to apply to merchandise or articles intended for other persons or for sale: *Provided*, That in case of residents of the United States returning from abroad, all wearing apparel and other personal effects taken by them out of the United States to foreign countries shall be admitted free of duty, without regard to their value, upon their identity being established, under appropriate rules and regulations to be prescribed by the Secretary of the Treasury, but no more than one hundred dollars in value of articles purchased abroad by such residents of the United States shall be admitted free of duty upon their return.

Paragraph 642, which is the corresponding paragraph of the law of 1913, reads as follows:

642. Wearing apparel, articles of personal adornment, toilet articles, and similar personal effects of persons arriving in the United States; but this exemption shall include only such articles as were actually owned by them and in their possession abroad at the time of or prior to their departure from a foreign country, and as are necessary and appropriate for the wear and use of such persons and are intended for such wear and use, and shall not be held to apply to merchandise or articles intended for other persons or for sale: *Provided*, That in case of residents of the United States returning from abroad all wearing apparel, personal and household effects taken by them out of the United States to foreign countries shall be admitted free of duty, without regard to their value, upon their identity being established under appropriate rules and regulations to be prescribed by the Secretary of the Treasury: *Provided further*, That up to but not exceeding $100 in value of articles acquired abroad by such residents of the United States for personal or household use or as souvenirs or curios, but not bought on commission or intended for sale, shall be admitted free of duty.

Under paragraph 709, *supra*, it is quite clear that the article in question should not be admitted free of duty. It will be observed that the words "actually accompanying" are omitted from paragraph 642 and there is inserted in lieu thereof the words "actually owned by them and in their possession abroad at the time of or prior to their departure from a foreign country." Without holding but considering for the purpose of this case that this provision applies to a resident of the United States returning, we think the testimony shows that the moving picture in question was owned by the protestant, and he at least had constructive possession of it prior to his departure from the foreign country. Another significant change extends the articles that may be admitted under the provisions of this paragraph and to a considerable extent broadens its scope: "Wearing apparel, articles of personal adornment, toilet articles, and similar personal effects of

persons arriving in the United States," being the first words of each paragraph, were the only definitive words in paragraph 709, whereas in paragraph 642 it is provided that residents of the United States returning shall have admitted free of duty articles "acquired abroad * * * for personal or household use or as souvenirs or curios, but not bought on commission or intended for sale." The testimony, which is uncontradicted, shows that the moving-picture film in question was intended for personal use, and we think it would under the circumstances also come within the definition of a souvenir.

Souvenir—n. That which reminds one, or revives one's recollection, of an event, a person, a place, etc.—*Century Dictionary.*

The protest is therefore sustained and the collector directed to reliquidate the entry, admitting the film free of duty.

(T. D. 34932—G. A. 7646.)

Rattan, split—Act of 1913.

The merchandise is shown to consist of split rattan, produced by stripping the bark off rattan with a machine and then cutting it into lengths, and which is used in the manufacture of brooms for street sweepers. *Held*, that splitting the rattan and cutting it into lengths do not make of it anything but rattan, nor does putting it up in bundles or bales change its character. It is therefore free of duty under paragraph 648, tariff act of 1913, simply as "rattan."—Following Brauss & Co. *v.* United States (120 Fed., 1017).

United States General Appraisers, New York, November 28, 1914.

In the matter of protest 745693 of Wm. Larzelere & Co. against the assessment of duty by the collector of customs at the port of Philadelphia.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

SOMERVILLE, *General Appraiser:* The merchandise is invoiced as 200 bales of "rattan waste," and the testimony shows it to consist of split rattan produced by stripping the bark off rattan with a machine and then cutting it into lengths, which are used exclusively in the manufacture of brooms for street sweepers. Duty was assessed thereon at 15 per cent ad valorem under paragraph 385 of the tariff act of 1913, which reads as follows:

385. That there shall be levied, collected, and paid on the importation of all raw or unmanufactured articles not enumerated or provided for in this section, a duty of 10 per centum ad valorem, and on all articles manufactured, in whole or in part, not provided for in this section, a duty of 15 per centum ad valorem.

Claim for free entry is made by the importers under paragraph 648 of said act, which so far as pertinent reads as follows:

648. * * * Bamboo, rattan, reeds unmanufactured, * * * in the rough, or not further advanced than cut into lengths suitable for sticks for umbrellas, parasols, sunshades, whips, fishing rods, or walking canes.

In board decision *In re* Brauss & Co., G. A. 5083 (T. D. 23530), the board had under consideration certain thin slivers of bamboo, of a substantially uniform thickness, about 12 inches in length, tied up in bundles, and evidently produced by cutting knives operated by machinery. The merchandise was intended for use in the manufacture of brooms for street-sweeping purposes, as in this case. It was assessed for duty under paragraph 208 of the tariff act of 1897, reading:

> 208. House or cabinet furniture, of wood, wholly or partly finished, and manufactures of wood, or of which wood is the component material of chief value, not specially provided for in this act, 35 per centum ad valorem.

It was claimed among other things to be free of duty under paragraph 700 of said act of 1897, the pertinent part of which follows:

> 700. * * * Bamboo, rattan, reeds unmanufactured, * * * in the rough, or not further advanced than cut into lengths suitable for sticks for umbrellas, parasols, sunshades, whips, fishing rods, or walking canes.

The board overruled the importers' protest, Judge Fischer dissenting. On appeal, however, the Circuit Court reversed the board and sustained the importers' claim for free entry under said paragraph 700 as bamboo. Brauss & Co. *v.* United States (120 Fed., 1017). The court, in its decision by Wheeler, district judge, stated:

> These are bundles of split bamboo, about 12 inches long, intended for use in making brooms, and have been assessed for duty as "manufactures of wood" under paragraph 208 of the act of July 24, 1897, as against bamboo, in the phrase "bamboo, rattan, reeds unmanufactured" in paragraph 700 as part of the free list. If "unmanufactured" does not reach back and include bamboo; these bundles are clearly in the free list, for they contain nothing but bamboo. If it does, it is still on the free list, unless they are bundles of manufactured bamboo. Splitting the bamboo and cutting it into lengths do not make it anything. And putting it up in bundles does not change its character. Frazee *v.* Moffitt (C. C.) (20 Blatch., 267; 18 Fed., 584).

It will be seen that the provision for rattan in paragraph 700 of the tariff act of 1897 is identically the same as that for bamboo, and that the corresponding paragraph 648 of the present tariff act of 1913 is identical in language with said paragraph 700 of said act of 1897 so far as its provision for bamboo and rattan is concerned. Again, the merchandise covered by the decisions cited, *supra*, and that covered by the protest under consideration is almost of the same character, cut in the same manner, and used for the same purpose, the only difference being that in the one case the material is split bamboo and in the other case split rattan. Hence it follows that the reasoning of the Circuit Court and the principles of law which governed the classification of split bamboo in the case cited, *supra*, are entirely applicable in determining the proper classification of the split rattan under consideration.

Therefore, on authority of said decision, we sustain the protest claiming free entry for the merchandise under said paragraph 648 as rattan. The collector's decision is reversed, and he is instructed to reliquidate the entry accordingly.

(T. D. 34933.)

Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, Somerville, and Hay.

BEFORE BOARD 1, NOVEMBER 24, 1914.

No. 86903.—APRICOT KERNEL OIL—ALMOND OIL.—Protests 735909, etc., of C. L. Huisking et al. (New York).

McCLELLAND, *General Appraiser:* The merchandise involved is described on the invoices as "apricot kernel oil" returned by the appraiser as oil sweet almonds. Duty was accordingly assessed at 5 cents per pound under the provision in paragraph 45, tariff act of 1913, for "almond oil, sweet." Protestants claim the oil to be dutiable under the provision in said paragraph which reads "all other expressed oils and all combinations of the same not specially provided for in this section, fifteen per centum ad valorem." Other claims are made.

The three witnesses called on behalf of protestants, and shown to be experienced in handling this merchandise, agree that the oil in question is made from apricot or peach kernels; that previous to 1906, or before the enactment of the pure food law, it was known in trade as and labeled "almond oil"; but since that law became operative, for the purpose of complying therewith, the labels on packages containing such merchandise were changed to read "apricot" or "peach kernel oil," and it has not since been known in the trade as almond oil, but as peach or apricot kernel oil. In other words, the labels now truthfully describe the contents of the packages, whereas formerly they did not. The value of apricot and peach kernel oil is shown to be 25 cents a pound, while almond oil is worth from 65 to 70 cents a pound.

The unpublished decision dated March 4, 1901, referred to in the appraiser's return on the invoice, contains among other things the following:

> The testimony before us shows that 75 per cent of all the so-called almond oil dealt in in the markets of this country is made not from almonds but from peach and apricot kernels. The article here in question is well known to the trade and is dealt in and always designated as almond oil and that designation must control its classification.

The evidence here submitted on behalf of protestants is uncontroverted. We therefore sustain their contention that the oil is dutiable at the rate of 15 per cent ad valorem under paragraph 45. * * *

No. 86904.—MARBLE FLOORING—MANUFACTURES OF MARBLE.—Protest 743965 of H. Bischoff & Co. (New York).

McCLELLAND, *General Appraiser:* The special report of the appraiser states that the merchandise consists of—

> Articles of marble of specific shapes and sizes made according to patterns or designs, with beveled edges, used as borders and for similar purposes, and are of sizes 16 by 10 inches, 21 by 20 inches, and other dimensions.

Duty was assessed thereon at the rate of 45 per cent ad valorem under paragraph 98 of the tariff act of 1913 as manufactures of marble, and they are claimed to be dutiable at one of the rates provided in paragraph 97 for slabs or tiles.

The testimony shows that the merchandise consists of sienna marble of various colors and sizes, seven-eighths of an inch in thickness, prepared from drawings, and used for flooring.

These pieces of marble have been cut to particular dimensions and have a specific use as a whole and not separately.

In United States *v.* Dudley (174 U. S., 670) the United States Supreme Court said:

> Where a manufactured article, such as sawed lumber, is usable for a dozen different purposes, it does not ordinarily become a new manufacture until reduced to a condition *where it is used for one thing only.* So long as "dressed lumber" is in a condition for use for house and ship building purposes generally, it is still "dressed lumber;" but if its manufacture has so far advanced that it can only be used for a definite purpose, as sashes, blinds, moldings, spars, boxes, furniture, etc., it becomes a "manufacture of wood."

The collector's classification of the merchandise seems to be in harmony with this ruling of the court, and we therefore affirm his action.

The protest is overruled in all respects.

No. 86905.—Red Chalk.—Protest 750557 of Main Central Railroad Co. (Portland, Me.). Opinion by McClelland, G. A.

Lump red chalk classified under paragraph 15, tariff act of 1913, was claimed free of duty as crude chalk (par. 446). Protest overruled on the authority of G. A. 4920 (T. D. 23027).

No. 86906.—Grass Twine—Baling Twine.—Protest 739746 of Geo. J. Bicknell Co. (Boston). Opinion by McClelland, G. A.

Baling twine, consisting of two strands of grass braided, was held properly classified as a manufacture of grass under paragraph 368, tariff act of 1913.

No. 86907.—Ermine Tails—Dressed Furs.—Protests 719190, etc., of A. Jacobson & Co. (New York). Opinion by McClelland, G. A.

Ermine tails partly dressed and manufactured were held properly classified as furs dressed on the skin under paragraph 439, tariff act of 1909, rather than free of duty as furs undressed (par. 573) or furs skins not dressed in any manner (par. 574).

No. 86908.—Tile Panels.—Protest 716355 of American Express Co. (New York). Opinion by McClelland, G. A.

Panels consisting of 70 decorated earthenware tiles, each tile made from a design, were held properly classified as articles made of tiles under the last provision of paragraph 85, tariff act of 1909.

No. 86909.—Olive Oil in Five-Gallon Tins.—Protest 721180-4581 of Jos. Cangelosi (New Orleans). Opinion by McClelland, G. A.

Olive oil in 5-gallon tins was held dutiable at 40 cents per gallon under paragraph 38, tariff act of 1909, as claimed.

No. 86910.—Olive Oil.—Protests 628135, etc., of Hauselt & Luneschloss (New York). Opinion by McClelland, G. A.

Protests overruled on the authority of United States *v.* Moos (5 Ct. Cust. Appls., —; T. D. 34528) relating to olive oil in tins.

No. 86911.—TILES.—Protest 678115-43240 of Wm. H. Hoops & Co. (Chicago), protests 672273, etc., of A. W. Fenton, jr., et al. (Cleveland and New York), and protest 691673 of G. S. Bush & Co. (Portland, Oreg.). Opinions by McClelland, G. A.

Protests overruled as to tiles classified under paragraph 85, tariff act of 1909.

No. 86912.—BRAUNSTEIN GROB—OXIDE OF MANGANESE.—Protest 676533 of Massce & Co. (New York).

BROWN, *General Appraiser:* The appraiser's report states that "the merchandise invoiced as Braunstein Grob consists of a chemical mixture composed of manganese oxide and about 0.4 per cent of nickel oxide."

It was classified as a chemical mixture at 25 per cent under paragraph 3, act of 1909. It is claimed to be free of duty as oxide of manganese under paragraph 619.

The classification is based upon an examination of the invoice by the examiner, which indicated to his mind that this small percentage of nickel oxide was mixed with the manganese oxide. No chemical analysis was made.

The importer claims that, if present at all, this nickel oxide was naturally present in manganese ore. He testified that he visited the mine, and the only process to which it was subjected after being dug out and before being shipped was to wash it with water and then heat it to drive off the water, then grind it and pack it in barrels for shipment; that he sometimes buys nickel oxide from the same importer in small packages by parcel post, but there would be no purpose in mixing the quantity here shown with the nickel oxide, as it would have no effect. He further claims that nickel oxide is sometimes present in small quantities or traces in some veins of manganese oxide.

An examination of the commercial chemistries does not disclose any purpose of mixing nickel oxide with manganese ore. An analysis quoted by Dana of a manganese ore in Augusta County, Va., shows a very slight amount of nickel oxide present in the ore. (See Dana's Descriptive Mineralogy, 6th edition, 1899, p. 244.)

The importer further testified that he sold this material to a paint manufacturer.

On the above state of facts we hold that the nickel oxide was naturally present, and this being true its presence does not take the merchandise out of the provision for oxide of manganese and put it under the provision for chemical mixtures.

Protest sustained.

No. 86913.—WOOL BLANKETS.—Protests 721319, etc., of Bollentin & Thompson et al. (New York).

BROWN, *General Appraiser:* The first three protests were submitted on the evidence taken in protest 721319 and the same sample. Later, the following month, another protest (724826), which is also included in this decision, was submitted on the same record in protest 721319. So that, in effect, all four cases are consolidated for decision together.

The merchandise was all classified under paragraph 378, act of 1909, either as manufactures of wool or as wool cloth. It is claimed to be dutiable as blankets under paragraph 379 at 33 cents per pound and 40 per cent ad valorem.

A statement by the examiner, in answer to a question of Judge McClelland, shows how the situation came about which led to these protests. Record (p. 3) of protest 724826:

Q. Now, then, just state what you were in the habit of doing with blankets?—A. I have had this quality of cloth in the shape of blankets and have passed them as such. Then later on the importer seemed to cater to the automobile trade and had had a blanket made on the other side which, when it came under my examination, was not, in my opinion, a bed blanket, but rather an auto or lap robe. My deductions were that that cloth binding, with curved corners, was not of the characteristics of

bed blankets, but was quite similar to the regular auto rugs in the store. Then the importer brought in that very same class of merchandise without any binding whatsoever in order to see what I would classify it at. In its unfinished state minus any binding I returned it as wool cloth 44 cents per pound and 55 per cent ad valorem.

The examiner had previously returned the goods in the other protests as manufactures of wool at 44 cents and 55 per cent as automobile blankets. The Government's position then amounts to this: The material here involved is concededly blanket material, and when in the shape to use on beds is properly classified as a blanket; but when it has a round binding or corner, rendering it unfit for use upon beds and is used as a carriage or automobile robe, it must pay duty as a "manufacture of wool," and if in its unfinished state minus any binding but cut into the same size as before, it should pay duty as "wool cloth."

With these contentions we can not agree. We hold that a blanket is still a blanket when used to keep out the cold over the knees in a carriage or automobile, and does not cease to be a blanket because not used on a bed or the back of a horse, or whether or not it is bound by a border.

And so holding we sustain the protests.

No. 36914.—Wool Grease.—Protests 676815, etc., of Wm. H. Thornley (San Francisco).

Brown, *General Appraiser:* The merchandise here is stated by the appraiser to be crude wool grease. It was classified under paragraph 290, act of 1909, as wool grease, crude and not refined, or improved in value or condition, at one-fourth of 1 cent per pound.

It is claimed to be free of duty under paragraph 580, covering "grease, fats, vegetable tallow, and oils * * *, such as are commonly used in soap making or in wire drawing, or for stuffing or dressing leather, and *which are fit only* for such uses, and not specially provided for in this section."

There is a further provision for greases, not here directly involved, in paragraph 3, covering all greases, not specially provided for in this section, 25 per cent ad valorem.

Following the principle established by the United States Court of Customs Appeals in United States *v.* Klipstein (5 Ct. Cust. Appls., —; T. D. 34003), we hold that the importer has not sustained the burden requiring him not only to show that the grease is used for stuffing or dressing leather, but that it has no other use of any moment. Further, in our opinion the classification was not correct, in any event, under paragraph 290, because that paragraph specifically mentions wool grease, and 580 only refers to grease not specially provided for.

The importer moved the admission of the record in Abstract 29103 (T. D. 32681), which motion was denied. Had it been granted it would not have resulted in any benefit to the importer, because it was that case which, on appeal to the United States Court of Customs Appeals, was reversed in T. D. 34003, above cited.

There is no issue raised as to paragraph 3 for greases not otherwise provided for, and even if the merchandise does not come under the classification here mentioned, but is properly classifiable under paragraph 3, that in turn would be no benefit to the importer, because no claim is made under that paragraph. On the issue raised by the protest he has failed to establish that the merchandise is properly dutiable under the claim he makes.

Protests overruled.

No. 36915.—Radiogen-Trinkwasser in Capsules and Ampoules.—Protest 759852 of Morgenstern & Co. (New York).

Brown, *General Appraiser:* The merchandise here involved consists of Radiogen-Trinkwasser imported in capsules and ampoules and classified as a medicinal substance in capsules and ampoules at 25 per cent under paragraph 17, act of 1913. It is claimed to be free as radium salts under paragraph 585, act of 1913.

In G. A. 7623 (T. D. 34863), following G. A. 7524 (T. D. 34052), we held this substance, when imported in packages of 2½ pounds or less gross weight, to be free of duty, notwithstanding the language of the first clause of paragraph 17, which we held only applied to the dutiable list and did not affect articles classifiable under the free list; but, as also stated in that opinion, the last clause, providing—

> That chemicals, drugs, medicinal and similar substances, whether dutiable or *free*, imported in capsules, pills, ampoules, etc., * * * shall be dutiable at not less than 25 per cent ad valorem,

applies to all such substances mentioned in the tariff act.

Therefore, when Radiogen-Trinkwasser is imported in this form it must be classified at 25 per cent ad valorem.

See also G. A. 7624 (T. D. 34864), where we held that Isotonique sea water imported in ampoules was dutiable under the last clause of paragraph 17.

Protest overruled.

No. 36916.—Fish in Tins—Fish in Oil.—Protest 426005 of Austin, Nichols & Co., protests 444795, etc., of L. Balbi & Co. et al., protest 742212 of Neumann & Schwiers Co. (Inc.), protest 496256 of G. Russo, and protests 441417, etc., of Fileppo Sabella et al. (New York). Opinions by Brown, G. A.

United States *v.* Miller (5 Ct. Cust. Appls., —; T. D. 34443) and Smith *v.* United States (5 Ct. Cust. Appls., —; T. D. 34008) followed as to fish in tins and fish in oil.

Before Board 2, November 24, 1914.

No. 36917.—Bottle Caps of Metal, Decorated.—Protests 734750, etc., of Budde & Westermann et al. (New York). Opinion by Fischer, G. A.

Bottle caps of metal, the tops of which are embossed with a design in the shape of a star, a bunch of grapes, or a crown, were held properly classified as bottle caps of metal, decorated, under paragraph 164, tariff act of 1913. G. A. 7617 (T. D. 34844) followed.

No. 36918.—Chain-Making Machines—Machine Tools.—Protests 719111, etc., of Goff & Page et al. (Providence). Opinion by Fischer, G. A.

Machines operated by electric power, capable of cutting metal with the aid of a cutting tool, classified as manufactures of metal under paragraph 199, tariff act of 1909, were held dutiable as machine tools (par. 197). G. A. 7559 (T. D. 34413) followed.

No. 36919.—Woven Silk Mufflers, Fringed.—Protest 710091-44884 of Wilson Bros. (Chicago). Opinion by Howell, G. A.

Woven silk mufflers fringed at the ends with a fringe produced in the process of weaving, classified as silk wearing apparel under paragraph 402, tariff act of 1909, were held dutiable as silk mufflers (par. 400). Kaskel *v.* United States (4 Ct. Cust. Appls., 38; T. D. 33264) and Hensel *v.* United States (4 Ct. Cust. Appls., 486; T. D. 33914) noted.

No. 36920.—Silk Plush—Hatter's Plush.—Protest 730382 of Zucker & Josephy (New York). Opinion by Howell, G. A.

Protest overruled as to silk plush classified under paragraph 399, tariff act of 1909 and claimed dutiable as hatter's plush (par. 477).

No. 36921.—Lace Articles made on Lever Machine.—Protest 680779 of American Express Co. (New York). Opinion by Howell, G. A.

Protest overruled as to cotton and flax lace articles made in part of Lever lace, classified under paragraph 350, tariff act of 1909.

No. 36922.—TRIMMED HATS IN PART OF LEVER LACE.—Protest 713594 of Koons, Wilson & Co. (Philadelphia). Opinion by Howell, G. A.

Protest overruled as to women's hats trimmed in part with Lever lace, classified under paragraph 350, tariff act of 1909.

BEFORE BOARD 3, NOVEMBER 24, 1914.

No. 36923.—WOOD PULP.—Protests 614622, etc., of John L. Vandiver et al. (Philadelphia). Opinion by Hay, G. A.

American Express Co. *v.* United States (4 Ct. Cust. Appls., 146; T. D. 33434) followed as to wood pulp. Protests sustained in part.

BEFORE BOARD 1, NOVEMBER 27, 1914.

No. 36924.—CIRCULAR TILES—MEASUREMENT—Protest 678500 of Rudolph Schroeder (New York).

MCCLELLAND, *General Appraiser;* The merchandise which is the subject of this protest was returned by the appraiser as earthenware tiles less than 2 inches square and the collector assessed duty accordingly at 8 cents per square foot under the provisions of paragraph 85 of the tariff act of 1909. The protest raises no question as to the rate of duty, but objection is made to the collector's method of ascertainment of quantity.

The tiles are circular, measuring thirteen-sixteenths of an inch across, and the notation on the invoice, as well as the testimony of the examiner who passed the tiles, indicates that the duties were determined upon the basis of 240 pieces to the square foot. It appears that the appraiser determined the number of tiles to the square foot by ascertaining how many of said circular tiles could be placed in a space of 12 square inches, making no allowance for the necessary vacant spaces in consequence of the tiles being circular.

The contention of protestant is that this was an unwarrantable method of ascertainment of quantity, and that the correct method would have been to have taken the measure of each tile, which would have been shown to be uniformly of thirteen-sixteenths of an inch; and that upon such basis of calculation there would be 278 pieces to the square foot.

There is no dispute on the part of the Government that the uniform measurement of the tiles is as stated by the importer, and it therefore becomes simply a question of determining under the law which was the correct method of ascertaining superficial quantity.

It is doutful whether the framers of the tariff act had in mind circular tiles; but, regardless of whether they did, it would seem to be the plain intent of the statute that the actual superficial quantity imported should be subject to duty. To accept the appraiser's method of ascertainment would be the equivalent of compelling the importer to pay a duty upon the basis of a measurement greater than the actual surface measurement of the tiles. In other words, the importer would have to pay duty on the aggregate of the vacant spaces shown between the tiles placed within the limits of a square foot. This we think would be a violation of both the letter and the spirit of the law. The protest is therefore sustained and the decision of the collector reversed accordingly.

No. 36925.—TILE PANELS.—Protest 760434 of American Express Co. (New York). Opinion by McClelland, G. A.

Panels composed of tiles were held properly classified under the last provision of paragraph 85, tariff act of 1909. Abstract 4208 (T. D. 25916) and Abstract 24630 (T. D. 31236) cited.

No. 36926.—Lenses—Condensers.—Protest 673128 of Oelschlaeger Bros. (New York). Opinion by Sullivan, G. A.

Lenses used to condense the light of a projection lens were held properly classified under paragraph 106, tariff act of 1909. Protest overruled claiming them to be dutiable as projection lenses (par. 108).

No. 36927.—Lenses for Bicycle Lamps.—Protest 680913 of Bernard, Judae & Co. (New York). Opinion by Sullivan, G. A.

Abstract 36425 (T. D. 34756) followed as to lenses for bicycle lamps, held dutiable as lenses with the edges unground under paragraph 106, tariff act of 1909, as claimed.

No. 36928.—Cut Glassware—Lenses.—Protest 729415 of Eytinge & Co. (Philadelphia). Opinion by Sullivan, G. A.

Merchandise classified as cut glassware under paragraph 98, tariff act of 1909, was held dutiable as lenses under the first clause of paragraph 106.

No. 36929.—Goggle Lenses.—Protest 562133-39188 of Marshall Field & Co. (Chicago). Opinion by Sullivan, G. A.

Lenses with ground edges for automobile goggles, classified under paragraph 106, tariff act of 1909, were claimed dutiable under paragraphs 99 and 104, tariff act of 1909. Protest overruled.

No. 36930.—Blown Glassware.—Protests 421584, etc., of The Scientific Materials Co. (Pittsburgh). Opinion by Sullivan, G. A.

Protests overruled as to blown glassware classified under paragraph 98, tariff act of 1909.

No. 36931.—Cabochons—Millinery Ornaments—Manufactures of Mother-of-Pearl.—Protest 553271-39367 of Gage Bros. & Co. (Chicago). Opinion by Sullivan, G. A.

Cabochons made of brass, with the surface inlaid with mother-of-pearl, classified as millinery ornaments under paragraph 448, tariff act of 1909, were claimed dutiable as manufactures in chief value of shell or mother-of-pearl (par. 464). Protest overruled.

No. 36932.—Metal Belts and Ornaments.—Protest 110017 of Geo. Borgfeldt & Co. (New York). Opinion by Sullivan, G. A.

G. A. 6734 (T. D. 27382) followed as to metal buckles and clasps used for belts, classified as jewelry under paragraph 434, tariff act of 1897, and held dutiable under paragraph 112 or 193.

No. 36933.—Tops for Hatpins—Beads—Imitation Jet.—Protests 430006, etc., of American Bead Co. (New York). Opinion by Sullivan, G. A.

Imitation emeralds and rubies and oval-shaped cameos pierced with two holes for use in the manufacture of jewelry were held dutiable under paragraph 449, tariff act of 1909, as claimed. Abstract 35260 (T. D. 34321) followed. Jewels for dress trimmings were held dutiable as beads (par. 421). United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506) followed as to imitation jet articles.

No. 36934.—Strings for Musical Instruments.—Protest 569903 of J. Ciancia-rulo (Philadelphia). Opinion by Sullivan, G. A.

Protest overruled as to strings for musical instruments classified under paragraph 467, tariff act of 1909.

No. 86935.—Violin Necks—Musical Instruments.—Protest 602337 of C. Meisel (New York). Opinion by Sullivan, G. A.

Violin necks classified as parts of musical instruments under paragraph 467, tariff act of 1909, were held dutiable as manufactures of wood (par. 215). G. A. 7247 (T. D. 31755) followed. Protest sustained in part.

No. 86936.—Parts of Musical Instruments.—Protests 604592, etc., of Amercian Express Co. et al. (New York). Opinion by Sullivan, G. A.

Richard *v.* United States (4 Ct. Cust. Appls., 470; T. D. 33883) followed as to violin bows, bridges, end pins, strings, and parts of clarinets held properly classified as parts of musical instruments under paragraph 467, tariff act of 1909.

No. 86937.—Accordions—Toys.—Protest 614499–41469 of Lyon & Healy (Chicago). Opinion by Sullivan, G. A.

Accordions having six keys, classified as musical instruments under paragraph 467, tariff act of 1909, were held dutiable as toys (par. 431). G. A. 4855 (T. D. 22765), and Illfelder *v.* United States (1 Ct. Cust. Appls., 109; T. D. 31115) followed.

No. 86938.—Imitation Jet Articles.—Protest 736125 of Henry Bendel (New York). Opinion by Sullivan, G. A.

United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506) followed as to imitation jet articles.

No. 86939.—Imitation Precious Stones—Beads.—Protests 636013, etc., of L. P. Hollander & Co. (Boston), and protests 597319, etc., of Knauth, Nachod & Kuhne, and protests 667451, etc., of Veit, Son & Co. (New York). Opinions by Sullivan, G. A.

Imitation precious stones classified under paragraph 199 or 109, tariff act of 1909, were held dutiable as beads (par. 421). Abstract 35260 (T. D. 34321) followed.

No. 86940.—Imitation Precious Stones—Pearls.—Protest 612843 of American Express Co. (New York). Opinion by Sullivan, G. A.

Imitation pearls mounted on brass posts, classified under paragraphs 199 and 109, tariff act of 1909, were held dutiable as imitation precious stones for use in the manufacture of jewelry (par. 449) as claimed.

No. 86941.—Mirrors.—Protests 658489–42862, etc., of Parisian Novelty Co. (Chicago). Opinion by Sullivan, G. A.

Small convex mirrors, classified under paragraph 109, tariff act of 1909, were claimed dutiable as toys (par. 431). Protests overruled. United States *v.* Kraemer (5 Ct. Cust. Appls., —; T. D. 34474) followed.

No. 86942.—Beaded Bags.—Protest 624806–41703 of Sears, Roebuck & Co. (Chicago). Opinion by Sullivan, G. A.

Protest overruled as to merchandise classified as bags composed in chief value of beads under paragraph 421, tariff act of 1909.

No. 86943.—Cyanide of Potassium.—Protests 751422, etc., of B. R. Lawrence (Detroit). Opinion by Brown, G. A.

On the authority of G. A. 7571 (T. D. 34495), cyanide of potassium classified as a chemical mixture under paragraph 3, tariff act of 1909, was held dutiable under paragraph 64, as claimed.

No. 36944.—FISH IN OIL.—Protests 734764, etc., of The Italian Importing Co. et al., and protest 750238 of J. Petrocelli & Co. (New York). Opinions by Brown, G. A.

Protests overruled as to fish in oil classified under the first provision of paragraph 216, tariff act of 1913.

BEFORE BOARD 2, NOVEMBER 27, 1914.

No. 36945.—CHAIN-MAKING MACHINES—MACHINE TOOLS.—Protest 759787 of Massce & Co. (New York). Opinion by Fischer, G. A.

On the authority of Abstract 35970 (T. D. 34604) chain-making machines were held dutiable as machine tools under paragraph 165, tariff act of 1913.

No. 36946.—CHAIN SWIVELS.—Protest 750665 of Hensel, Bruckmann & Lorbacher (New York). Opinion by Fischer, G. A.

Metal swivels suitable for use in the manufacture of chains, classified under paragraph 356, tariff act of 1913, were held dutiable as manufactures of metal (par. 167).

No. 36947.—AGRICULTURAL IMPLEMENTS.—Protests 714855, etc., of A. S. Fraser (Buffalo). Opinion by Fischer, G. A.

A special band cutter and self-feeder used in connection with a threshing machine, classified as a manufacture of metal under paragraph 199, tariff act of 1909, was claimed dutiable under paragraph 476. Protests overruled. Abstract 32754 (T. D. 33578) cited.

No. 36948.—SILK RIBBONS—SILK BRAIDS.—Protest 674991 of E. de Grandmont (New York). Opinion by Howell, G. A.

Merchandise classified as silk braids under paragraph 402, tariff act of 1909, and found to be ribbons, was held dutiable under the provisions of paragraph 401, as claimed.

No. 36949.—ARTIFICIAL SILK TRIMMINGS.—Protests 682249, etc., of Karl Neuhoff (New York). Opinion by Howell, G. A.

Webbings or trimmings classified as composed in chief value of silk under paragraph 405, tariff act of 1909, were claimed dutiable under paragraph 349. Protests sustained in part.

BEFORE BOARD 3, NOVEMBER 27, 1914.

No. 36950.—MAGGI SOUP TABLETS—VEGETABLES.—Protests 723551, etc., of B. R. Anderson & Co. (Seattle and Port Townsend).

WAITE, *General Appraiser:* The commodity here is described on the invoices as "Maggi's desiccated soups in tablets." The samples produced show the goods to be blocks of rectangular shape, about 1½ by 1 by 2 inches, of a grayish white substance, easily broken and crumbled between the fingers. The samples are labeled "Maggi's soups," and bear also the name of the particular kind or flavor, such as "peas and haricots," "white haricots," and "green pease." They are intended for use in making soup for human consumption. They were assessed as prepared vegetables under paragraph 252, tariff act of 1909, and are claimed to be dutiable as unenumerated manufactured articles under paragraph 480, with additional claims under paragraphs 269 and 286.

The same commodity appears to have been passed upon by the board in Abstract 31611 (T. D. 33263) and Abstract 31850 (T. D. 33304), where it was held to be vegetables prepared and dutiable under paragraph 252, tariff act of 1909. The importers claimed there that it was an unenumerated manufactured article dutiable under paragraph 480. These decisions were appealed to the Court of Customs Appeals.

(Hunter *v.* United States, 5 Ct. Cust. Appls., —; T. D. 34004.) The court sustained the finding of the board, and used this language:

The collector classified the merchandise as prepared vegetables. From the evidence adduced by the importers at the hearing before the board it appeared that the tablets are "vegetables prepared for soup," but as to how the goods are made up, or whether meat, bacon, or anything other than vegetables enters into their composition is not disclosed by the record. The fact that the tablets are vegetables prepared for soup does not take them out of the category of "vegetables, prepared." (Nix *v.* Hedden, 149 U. S., 304, 307.)

On the case as it stands we can not say that the presumption of correctness attaching to the collector's decision has been overcome, and much less can we say that the goods are dutiable under any of the paragraphs claimed by the importers in their protests.

The court stated, however, that the real ground of protest upon which the importer relied in both cases was the claim that the merchandise was an unenumerated manufactured article.

The case now before us is much stronger, in our judgment, for the Government than that case, as some testimony was taken and an analysis by the Government analyst was submitted, from which it appears that the composition of the goods before us in this case is as follows:

	Per cent.
Protein	24.5
Starch	24.9
Fat	9.2
Mineral matter	11.2
Cellulose, etc	25.2
Moisture	5.0
	100.0

It is also stated in the report of the analyst that the tablets contain no meat extract.

In the testimony of the analyst on the stand we find the following:

Q. How about cellulose?—A. Cellulose is vegetable matter.

Q. From such examination as you have made, is it possible for you to state the origin of the protein and the fat in this particular sample?—A. No; not conclusively; but as there was no meat extract in there, I could deduce from that it is mostly derived from vegetable matter; in fact, all vegetable matter.

He further testified to the well-known fact that starch is a vegetable product.

Thus it will be seen that there is no meat or meat extract contained in these products. No evidence was produced showing how this tablet or block of material was made. The only claim dwelt upon in the brief of the importers is that it is an unenumerated manufactured article. We think the case of Hunter *v.* United States, *supra*, should govern, as we are firmly of the opinion that the importers have not produced enough testimony to overcome the presumption of correctness attending the classification of the collector, to say nothing of the testimony which appears to justify his finding. The protests are therefore overruled.

No. 36951.—Wooden Figures, not Regalia.—Protest 723334 of Rev. J. J. Sheehy (Los Angeles). Opinion by Waite, G. A.

Wooden figures or heads which are to be placed in niches in the wall of a church or sanctuary, classified as manufactures of wood under paragraph 215, tariff act of 1909, were held not to be "regalia" within the limitations placed upon that term in paragraph 661.

No. 36952.—Terra Cotta Figure for School.—Protest 720638 of Anne Seward (New York). Opinion by Waite, G. A.

A terra-cotta column and copy of the "Winged Victory" imported for a school for art purposes, classified as articles of earthenware under paragraph 93, tariff act of 1909, were held entitled to free entry as a cast of sculpture to be used as a model for art educational purposes (par. 661).

No. 36953.—PEAS IN TINS DAMAGED BY SEA WATER—NONIMPORTATION.—Protests 687811, etc., of Austin, Nichols & Co. (New York). Opinion by Waite, G. A.

Peas in tins which were damaged by sea water, found to be absolutely worthless were held to be a nonimportation on the authority of Lawder *v.* Stone (187 U. S., 281) and United States *v.* Pastene (3 Ct. Cust. Appls., 164; T. D. 32458). Protests sustained in part.

No. 36954.—WEIGHT OF GARLIC.—Protests 725226, etc., of Cadierno Hermanos et al. (San Juan). Opinion by Waite, G. A.

Protests overruled as to weight of garlic.

No. 36955.—STRAWBERRY PULP.—Protests 730527, etc., of J. Menist (New York). Opinion by Waite, G. A.

Strawberry pulp imported in tins, classified as fruits preserved in their own juices under paragraph 217, tariff act of 1913, were claimed dutiable under the provision in the same paragraph for "all edible fruits, including berries, when dried, desiccated, evaporated, or prepared in any manner." Protests overruled. Habicht *v.* United States (1 Ct. Cust. Appls., 10; T. D. 30772) cited.

No. 36956.—ANTIQUE FURNITURE.—Protests 733227, etc., of Balfour, Guthrie & Co. (San Francisco). Opinion by Waite, G. A.

Protests sustained claiming free entry for certain antique furniture under paragraph 717, tariff act of 1909.

(T. D. 34934.)

Kazunoko.

UNITED STATES *v.* KAGAWA & CO. *et al.* (No. 1321).

1. PRESERVED.

When fish are dried, whether by means of the heat of the sun or otherwise, being thereby saved from decomposition for a substantial period of time, they are "preserved" within the common meaning of that term.

2. KAZUNOKO—FISH ROE.

The term "preserved" in paragraph 270, tariff act of 1909, does not bear a restricted interpretation, and the provision there for "caviar, and other preserved roe of fish" was intended to classify all fish roe, which had been treated in any manner for preservation for food purposes, as preserved fish roe.

United States Court of Customs Appeals, November 18, 1914.

APPEAL from Board of United States General Appraisers, G. A. 7507 (T. D. 33911).

[Reversed.]

Bert Hanson, Assistant Attorney General (*Frank L. Lawrence*, special attorney, on the brief), for the United States.

William Hayward for appellee.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MARTIN, Judge, delivered the opinion of the court:

The merchandise in this case was imported from Japan under the tariff act of 1909. It is called "Kazunoko" and consists of the roe of the herring in a dried condition.

The collector classified the article as preserved fish roe, dutiable as such under paragraph 270 of the act, and accordingly assessed the same with duty at the rate of 30 per cent ad valorem.

The importers protested against the assessment, claiming free entry for the merchandise as fish eggs under paragraph 560 of the act.

The protest was submitted to the Board of General Appraisers and was sustained, from which decision the Government now appeals.

The following is a copy of the two competing paragraphs above cited:

270. Fish (except shellfish) by whatever name known, packed in oil, in bottles, jars, kegs, tin boxes, or cans, shall be dutiable as follows: When in packages containing seven and one-half cubic inches or less, one and one-half cents per bottle, jar, keg, box, or can; containing more than seven and one-half and not more than twenty-one cubic inches, two and one-half cents per bottle, jar, keg, box, or can; containing more than twenty-one and not more than thirty-three cubic inches, five cents per bottle, jar, keg, box, or can; containing more than thirty-three and not more than seventy cubic inches, ten cents per bottle, jar, keg, box, or can; all other fish (except shellfish) in tin packages, thirty per centum ad valorem; fish in packages, containing less than one-half barrel, and not specially provided for in this section, thirty per centum ad valorem; caviar, and other preserved roe of fish, thirty per centum ad valorem.

560. Eggs of birds, fish, and insects (except fish roe preserved for food purposes): *Provided, however*, That the importation of eggs of game birds or eggs of birds not used for food, except specimens for scientific collections, is prohibited: *Provided further*, That the importation of eggs of game birds for purposes of propagation is hereby authorized, under rules and regulations to be prescribed by the Secretary of the Treasury

It may be repeated that the present issue is whether the merchandise in question is dutiable under the provision for preserved fish roe appearing in the last clause of paragraph 270, or is entitled to free entry under the provision for fish eggs in paragraph 560, both above copied.

It appears from the testimony that the present article comes from the island of Hokido, Japan, and is prepared during a season of the year when there is no rainfall there. The roe is taken from the herring and is spread thinly upon mats to be dried by the wind and sunshine. These mats are moved or turned at intervals, and after about two weeks of this treatment the roe is thoroughly dried. No preservative substance of any kind is applied to the roe, the sole drying agencies being the sunshine and the wind; but if the roe were not thus purposely exposed to the action of these agencies it would quickly spoil. When thus dried the roe is edible, and will keep without spoiling for two or three years; but the crop of the same year is preferred for consumption. According to Japanese custom the article is eaten only about the beginning of the new year. At that time the dried roe is soaked in water, "shoyu" is poured upon it, and it is eaten as a food appropriate to the season.

As appears from the foregoing statement the sole question in the case is whether the herring roe, thus dried for food purposes, is

"preserved" within the meaning of paragraphs 270 and 560 above quoted.

It is within common knowledge that the word "preserved" bears a general signification which is quite broad enough to include a process like that above described. In relation especially to fish and meat the term in question was early applied to processes of drying alone.

The following quotations tend to sustain this statement:

Encyclopædia Britannica:

Food preservation.— * * * Preservation by drying. * * * By the removal of water the most perishable materials, like meat or eggs, can be rendered unchangeable, except so far as the inevitable oxidation of the fatty substances contained in them is concerned and which is independent of life action. The drying of meat, upon which a generation ago inventors bestowed a great deal of attention, has become almost obsolete, except for comparatively small articles or animals, like ox tongues or tails and fish. * * *

International Encyclopædia:

Food, preservation of.- * * * Desiccation is probably the oldest, as it is the simplest method of preserving fruits, vegetables, and even meats from decay. As organic life requires moisture, the thorough drying of the food checks its growth. This was first done in the sun or by the fire. * * *

Johnson & North case, G. A. 1250 (T. D. 12566), before the Board of General Appraisers (1892):

LUNT, *General Appraiser.* * * * The most ancient and common methods of preserving fish are by drying, salting, smoking, and pickling. * * *

It may be accepted without further authority that when fish are dried, whether by means of the heat of the sun or by other means, and are thereby saved from decomposition for a substantial period of time, they may properly be said to be "preserved" within the common meaning of that term. There is nothing in the paragraphs now under review which would indicate that Congress intended the word as therein used to bear a restricted interpretation. Indeed a reading and comparison of the provisions in question lead to the opposite conclusion.

In considering this issue it may be well also to review briefly the history of the provisions in question.

In the tariff act of October 1, 1890, eggs were made dutiable by the dozen, and smoked, dried, salted, pickled, and frozen fish by the pound, both by *eo nomine* provisions, there being in the act however, no dutiable provision *eo nomine* for fish roe. In that act for the first time appeared the prototype of the free-list paragraph now in question, the same appearing without exception or proviso of any kind and reading simply as follows:

(Free list.) 561. Eggs of birds, fish, and insects.

Under this act, in the Sheldon case, G. A. 372 (1891) (T. D. 10877), the Board of General Appraisers held that caviar, salted and packed in tins, was entitled to free entry as eggs of fish, saying:

There is no limitation imposed upon the kind of fish eggs in paragraph 561, or whether fresh, pickled or preserved.

The act of August 27, 1894, contained no substantial amendment relating to the present subject, paragraph 471 of that act simply repeating the free-list provision of the preceding act for eggs of birds, fish, and insects. Under this act, in the Bock case, G. A. 2897 (1895) (T. D. 15716), the Board of General Appraisers held that canned cod roe packed in hermetically sealed tins and processed for preservation was entitled to free entry as fish eggs, saying:

There is nothing in paragraph 471 which limits the free entry of fish eggs to such as are capable of being hatched. Although these eggs have been subjected to heat in processing and are designed for use as a delicate article of food, still they have not lost their identity as fish eggs and therefore the protest must be sustained.

In the tariff act of July 24, 1897, duty was again laid *eo nomine* upon eggs and also upon smoked, salted, pickled, and frozen fish, but again there was no dutiable provision for fish roe *eo nomine*. However, the free-list provision was substantially amended, appearing in the following terms:

549. Eggs of birds, fish, and insects: *Provided, however*, That this shall not be held to include the eggs of game birds or eggs of birds not used for food, the importation of which is prohibited except specimens for scientific collections, nor fish roe preserved for food purposes.

This was the first enactment of the exception for "fish roe preserved for food purposes," as part of the free-list provision, but, as already stated, no correlative amendment for a duty upon such preserved fish roe *eo nomine* appeared in the dutiable provisions of the act. The following decisions relate to that act:

In the Odo case, G. A. 5120 (1902) (T. D. 23657), the Board of General Appraisers held that canned fish roe processed with heat and packed in hermetically sealed cans for food purposes was not entitled to free entry under paragraph 549 of that act as eggs of fish, but was dutiable as a nonenumerated manufactured article. The board refused to sustain the Government's contention for an assessment of the article by similitude with dried fish, saying:

It is a manufactured product in that it has been prepared and brought into condition suitable for food; and it is not enumerated in any of the schedules of the tariff act. We find that this merchandise is fish roe preserved for food purposes, and hold that it is a nonenumerated manufactured article. * * *

In the Kojima case, G. A. 5424 (1903) (T. D. 24682), the Board of General Appraisers, dealing with "dried fish roe packed in tins," overruled the decision just above cited and held that the merchandise was dutiable by similitude with fish in tins and not as a nonenumerated manufactured article.

In the Harper case, Abstract 16731 (1907) (T. D. 28409), the merchandise being "dried fish eggs," the Board of General Appraisers held the article to be dutiable by similitude with "fish, dried," and sustained an assessment to that effect.

The three decisions under the tariff act of 1897 which have just been severally cited all relate to fish roe which was dried by processing, and all held the same to be within the exception which excludes "fish roe preserved for food purposes" from the free list of the tariff act of 1897, although differing in the classification of the same for duty under that act. See also the Benson case, Abstract 1237 (T. D. 25261), Menzel *v.* United States (135 Fed., 918; T. D. 25875), same case (142 Fed., 1038; T. D. 27118), the Tasker case, Abstract 10410 (T. D. 27209) (this case relating to inedible fish roe), and the case of Commission Co., Abstract 33842 (T. D. 33795).

At the tariff revision of 1909 the free-list provision for fish eggs excepting "fish roe preserved for food purposes" was reenacted in substantially the same form as in the act of 1897, and a corresponding provision for duty upon "caviar, and other preserved roe of fish" was added to the fish schedule, as appears by the copies of paragraphs 270 and 560 above given.

The decisions under the act of 1897 above cited tend strongly to sustain the Government's contention in this case. Those decisions all held that fish roe dried by heat processing was dutiable as "preserved fish roe" under the provisions in question, and the decisions in question were all published before the tariff revision of 1909. No emphasis was laid in any of these decisions upon the methods whereby the fish roe in question had been dried; in some of the cases the merchandise was simply described as "dried fish roe." It is therefore reasonable to believe that in the tariff revision of 1909 the same term was employed by Congress with the same meaning, and that it was intended to cover fish roe which had been dried, regardless of the processes employed in drying the same.

This view finds further confirmation in the unqualified use of the word "caviar" in the dutiable provision of the act of 1909, whereby all caviar prepared for food purposes was made dutiable regardless of the extent to which it had been advanced in condition prior to importation. See Hansen *v.* United States (1 Ct. Cust. Appls., 1; T. D. 30769); United States *v.* American Express Co. (2 Ct. Cust. Appls., 95; T. D. 31636). By this provision for "cavair, and other preserved roe of fish," Congress evidently intended to classify all fish roe which had been treated in any manner for preservation for food purposes as preserved fish roe and to subject the same to duty as such under the fish schedule.

In this view of the case the decision of the board is *reversed.*

(T. D. 34935.)

Pyrometer tubes.

STEGEMANN, JR., *v.* UNITED STATES (No. 1358).

1. MARQUARDT-MASSE.

The importer claims the merchandise is made of Marquardt-Masse. This term is not in common use and no authority is given that sheds any light on the question of what Marquardt-Masse is, of what it is composed, or how made. The record shows no chemical analysis of the tubes in controversy.

2. AN AFFIRMATIVE SHOWING HERE REQUIRED OF IMPORTER.

The importer's contention is that the tubes were not dutiable under paragraph 94, but paragraph 95, tariff act of 1909. The burden is on him of establishing both these claims. Under the evidence if it were assumed the first contention is sound there is no proof of the other.

United States Court of Customs Appeals, November 18, 1914.

APPEAL from Board of United States General Appraisers, Abstract 34606 (T. D. 34127).

[Affirmed.]

Comstock & Washburn for appellant.

Bert Hanson, Assistant Attorney General (*Charles E. McNabb*, assistant attorney, of counsel), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

BARBER, Judge, delivered the opinion of the court:

The question here is the proper rate of duty upon certain pyrometer tubes of different lengths. These tubes are used in the manufacture of apparatus for high temperature measurements. When used in furnaces they penetrate the roof or side walls and extend into the heated zone. There were three importations, one was assessed as plain porcelain, another as white china, and the other as white porcelain, all at the rate of 55 per cent ad valorem under paragraph 94 of the tariff act of 1909. It is stipulated, however, that the merchandise involved in all these protests is of the same kind and that the record, testimony, and exhibits as to one protest may be accepted in evidence as a part of the record as to the others.

The importer claims duty should have been taken at the rate of 35 per cent ad valorem under paragraph 95 of the same act. We insert here the respective paragraphs:

94. China, porcelain, parian, bisque, earthen, stone and crockery ware, plain white, plain brown, including clock cases with or without movements, pill tiles, plaques, ornaments, toys, charms, vases, statues, statuettes, mugs, cups, steins, and lamps, all the foregoing wholly or in chief value of such ware, not painted, colored, tinted, stained, enameled, gilded, printed, or ornamented or decorated in any manner; and manufactures in chief value of such ware not specially provided for in this section, fifty-five per centum ad valorem.

95. Articles and wares composed wholly or in chief value of earthy or mineral substances, not specially provided for in this section, whether susceptible of decoration or not, if not decorated in any manner, thirty-five per centum ad valorem; if deco-

rated, forty-five per centum ad valorem; carbon, not specially provided for in this section, twenty per centum ad valorem; electrodes, brushes, plates, and disks, all the foregoing composed wholly or in chief value of carbon, thirty per centum ad valorem.

At the hearing before the board but one witness, Mr. Wilson, the owner of the Wilson-Mauellen Co., for whose benefit the importations were made, was called. Testifying in his own behalf, he said, in substance, that these tubes were made of Marquardt-Masse, a substance known, he said, all over the world for many years as the only material of this general character that would stand a very high temperature and not melt; that Marquardt-Masse was not porcelain; that porcelain was used by makers of lower temperature pyrometers; that porcelain would not stand the high heat attempted to be measured by those he manufactured. He produced a sample of a porcelain tube, which he testified by its trade-mark showed it had been made by the same works which made "all grades of porcelain Marquardt fire clay refractory," which was admitted in evidence as an illustrative exhibit. Comparing the two, he said the importations were more porous than the illustrative exhibit; that the porcelain tube was a glazed material; that all true porcelain gives a glaze as the result, while the imported tubes, excepting the flanges at one end thereof which had not been subjected to the treatment, had a coating of glazing material, had been covered in a glazing material without resulting in actually glazing the same on account of the fact that the glaze had been largely absorbed; that he did not think they were glazed, but they had been rendered less porous by a glazing material; that he could say definitely from its appearance and physical properties that the imported merchandise was not porcelain, but he could not say what it was; that one reason why he was satisfied it was not porcelain was its porosity, but that its smelting point was the chief reason; that he used the term "porcelain" as meaning a material offered to him as porcelain tubes by makers thereof and as meaning material which had been sold as porcelain for any purpose he had ever run across; that he was not a potter or china maker at all. He further testified that these pyrometer tubes were never ornamented or decorated in any way; that he would not imagine anyone would decorate a tube to be used on the inside of a high temperature furnace; that the Marquardt-Masse more nearly approached fire clay than porcelain.

Upon this evidence the Board of General Appraisers overruled the protest, saying, among other things, that although the witness had testified the articles were not porcelain he was unable to state what they were and as the paragraph *eo nomine* provided for china, porcelain, parian, bisque, earthen, stone and crockery ware, the testimony of the witness was insufficient to base thereon a different

classification, and insufficient to enable them to definitely determine that the merchandise was not properly classified by the collector.

Upon the question as to whether or not the merchandise is porcelain or some other of the wares named in paragraph 94, the board has in effect failed to find that the importation is not one of these wares. Doubtless in considering the weight to be given to the importer's evidence on this question the board has taken into consideration the qualifications of the witness to testify upon the subject as well as what he said relating thereto.

It appears he is not a potter or china maker; that he uses the word "porcelain" as meaning the material sold as such for any purpose he has ever run across, which it is apparent refers chiefly if not entirely to porcelain tubes. He expressly states that he does not know what the merchandise is other than that it is Marquardt-Masse, a substance of which he says "it has been known all over the world for many years as the only material that will stand a very high temperature and not melt, of this general character that would be refractory."

In the argument in this court no citation is made to any authority which treats of Marquardt-Masse, nor have we found the term used in any dictionary or technical work. Lexicographers and technical writers mention so many varieties of porcelain, with varying characteristics, that the board may well have doubted if the evidence of the witness was sufficient to establish, as against the presumed correctness of the collector's classification, that these tubes are not of porcelain or of some other of the materials mentioned in paragraph 94.

The importer contends that under the authority of United States *v.* Fensterer (2 Ct. Cust. Appls., 368; T. D. 32094) this merchandise is not within the scope of paragraph 94, because it is not susceptible of decoration. In this connection it is conceded, as the fact is, that there is ample space and opportunity to decorate these tubes, but it is urged that, in a commercial sense, such decoration or ornamentation is practically unknown because of the use to which these tubes are devoted.

A discussion of this question, however, seems unnecessary to the disposition of the case. The importer claims that the merchandise is *not* dutiable under paragraph 94 and *is* dutiable under paragraph 95. The burden is upon him of establishing both these claims. Benjamin Iron & Steel Co. *v.* United States (2 Ct. Cust. Appls., 159; T. D. 31677); Gage Bros. & Co. *v.* United States (2 Ct. Cust. Appls., 427; T. D. 32174); Frank *v.* United States (2 Ct. Cust. Appls., 85; T. D. 31633); United States *v.* Park (3 Ct. Cust. Appls., 352; T. D. 32907).

If we assume that the merchandise is neither porcelain nor any other of the articles provided for in paragraph 94, or that, if one of

the articles therein named, it is not in the meaning of the statute susceptible of decoration or ornamentation, it still remains to be ascertained, and for the importer to show affirmatively, that these tubes are composed wholly or in chief value of earthy or mineral substances not specially provided for elsewhere than in paragraph 95. But importer's evidence is that he does not know of what these tubes are made, and we are unable to see why the board or this court should be asked to assume to possess greater knowledge on this subject than the witness. The term "Marquardt-Masse" is not in common use. We do not know, nor, as stated, are we referred to any writing or authority that sheds any light on the question of what it is, of what composed, or how made. A chemical analysis of these tubes and an explanation of the methods employed in their manufacture would undoubtedly afford a sufficient basis for their proper classification. This information the record does not contain. It was the duty of the importer to furnish the same, and hence, as we view the case, we are not justified in classifying the merchandise under paragraph 95 even if it be assumed that the evidence and the law warrant the conclusion that it is not classifiable under paragraph 94.

The judgment of the Board of General Appraisers is *affirmed*.

(T. D. 34936.)

Straw slippers.

BROWN & CO. *v.* UNITED STATES (No. 1359).

1. STRAW AND GRASS.

"Straw" and "grass" in popular usage have never been applied to fibers taken from the bark of trees, but even if bast fiber were regarded as vegetable fiber of like kind with ordinary grass and straw, paragraph 463, tariff act of 1909, would not apply. That paragraph is expressly limited to manufactures of grass and straw in their natural form and structure.

2. PROTEST INSUFFICIENT.

However, the protests here confined the collector's attention to paragraph 215; there was nothing in them to notify that official that any reliance was placed on paragraph 463. The protests were insufficient.

United States Court of Customs Appeals, November 18, 1914.

APPEAL from Board of United States General Appraisers, Abstract 34599 (T. D. 34127).

[Affirmed.]

Allan R. Brown for appellants.

Bert Hanson, Assistant Attorney General (*Charles E. McNabb*, assistant attorney, of counsel), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the court:

Several shipments of slippers, classified by the collector of customs at the port of New York as wearing apparel composed in chief value

of cotton, were assessed for duty at 50 per cent ad valorem under the provisions of paragraph 324 of the tariff act of August 5, 1909, which paragraph reads as follows:

324. Clothing, ready-made, and articles of wearing apparel of every description, composed of cotton or other vegetable fiber, or of which cotton or other vegetable fiber is the component material of chief value, made up or manufactured, wholly or in part, by the tailor, seamstress, or manufacturer, and not otherwise provided for in this section, fifty per centum ad valorem.

The classification of 33 of the 57 entries made was protested by the importing company on the ground that the goods covered by them were composed in chief value of bast, dutiable at 35 per cent ad valorem under the provisions of paragraph 215 of the said act, which paragraph reads as follows:

215. House or cabinet furniture wholly or in chief value of wood, wholly or partly finished, and manufactures of wood or bark, or of which wood or bark is the component material of chief value, not specially provided for in this section, thirty-five per centum ad valorem.

To the classification of the remaining 24 entries protest was made on the ground that the articles therein described were manufactures in chief value of grass or straw, dutiable at 35 per cent ad valorem under paragraph 463 of the same act, which paragraph, in so far as material, reads as follows:

463. Manufactures of * * * grass, * * * straw, * * * or of which these substances or any of them is the component material of chief value, not specially provided for in this section, thirty-five per centum ad valorem; but the terms "grass" and "straw" shall be understood to mean these substances in their natural form and structure, and not the separated fiber thereof; * * *.

The board found that all of the slippers were composed in chief value of straw, and accordingly sustained the protests claiming that the goods were manufactures in chief value of straw and overruled those in which it was claimed that the articles imported were manufactures in chief value of bast.

The importer appealed from that part of the board's decision overruling the protests based on paragraph 215, and now contends that those protests were sufficient to call the attention of the collector to the fact that the goods were claimed to be manufactures of straw or grass, which class of goods is provided for in paragraph 463 and in no other paragraph of the act.

The trouble with that contention is that the importer did not claim that the goods covered by the overruled protests were manufactures of straw or grass. The claim of those protests was that the imporations to which they referred were manufactures of bast, and bast, as that term is commonly understood, is neither straw nor grass. The term "bast" was originally applied to the fiber obtained from the inner bark of the lime or linden tree. Subsequently the meaning was apparently extended to cover the strong, woody fiber

obtained from the phloem or inner fibrous bark of various trees other than the linden. See Worcester's Dictionary, Webster's International Dictionary, Century Dictionary, Standard Dictionary, and Oxford Dictionary.

The words "straw" and "grass" in popular usage have never been applied to the fibers taken from the bark of trees, and even if bast fiber could be regarded as a vegetable fiber of the same nature and kind as the separated fibers obtained from grass and straw, paragraph 463 would still be inapplicable in terms to bast, for the reason that that paragraph is expressly limited to manufactures of grass and straw in their natural form and structure.

In our opinion the denomination of the slippers as manufactures in chief value of bast conveyed not the shadow of a hint that they were made of straw or grass and led the collector to the belief that they were claimed by the protests to be manufactured of woody fiber—a belief which must have been strengthened by the allegation that the goods were dutiable under paragraph 215, which provides for manufactures of wood or bark or of which wood or bark is the component material of chief value.

The classification of the goods, the rate of duty, and the paragraph specified by protestants confined the attention of the collector to paragraph 215, and certainly there was nothing in any of the protests which would cause the collector to suspect that the importers did not rely on paragraph 215, but on paragraph 463, which was not mentioned at all. If the importers had paragraph 463 in mind at the time they made objection to the collector's classification, their protests not only fail to show that fact, but affirmatively establish that the collector was misled and misdirected as to the real ground of their complaint.

We think the protests involved in this appeal were wholly insufficient and that therefore they were properly overruled by the board.

The decision of the Board of General Appraisers is *affirmed*.

(T. D. 34937.)

Copper matte.

UNITED STATES *v.* AMERICAN SMELTING & REFINING CO. (No. 1365).

COPPER MATTE, REGULUS OF COPPER.

The merchandise is produced by smelting metalliferous rock containing sulphides of lead, copper, and iron. It was stipulated that the importations were mattes and that "matte" and "regulus" are interchangeable terms. Now the uncontradicted testimony shows that mattes containing the percentages of copper, lead, iron, and sulphur found in these importations were known to the wholesale trade before and after the passage of tariff act of 1909 as copper mattes. They must be accepted to be copper mattes, and as such being regulus of copper they were entitled to free entry.

United States Court of Customs Appeals, November 18, 1914.

APPEAL from Board of United States General Appraisers, Abstract 35013 (T. D. 34279).

[Affirmed.]

Bert Hanson, Assistant Attorney General (*Thomas J. Doherty*, special attorney, of counsel), for the United States.

Gerry & Wakefield for appellee.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the court:

Certain merchandise designated in the invoice as copper matte and classified by the collector of customs at Perth Amboy, N. J., as lead-bearing ore was assessed for duty at 1½ cents per pound under the provisions of paragraph 181 of the tariff act of 1909, which paragraph, in so far as pertinent, reads as follows:

181. Lead bearing ore of all kinds, one and one-half cents per pound on the lead contained therein; * * *.

The importer protested that the importation was duty free as copper matte or regulus under the following provision of the free list of said act:

(Free List). That on and after the day following the passage of this act, * * * the articles mentioned in the following paragraphs shall, when imported into the United States * * * be exempt from duty:

* * * * * * *

544. Copper ore; regulus of, and black or coarse copper, and copper cement; * * *.

The Board of General Appraisers sustained the protest and the Government appealed.

The merchandise in question was produced by fusing or smelting ore or metalliferous rock or minerals containing sulphides of lead, copper, and iron. It appears that when ores bearing sulphides of lead, copper, and iron are fused—that is to say, reduced to a melted state—the slag or dross, refuse and scoria separates from the other constituents of the ore and floats at the top. So much of the lead as is freed from sulphur falls to the bottom of the crucible, leaving the fused sulphides of lead, copper, and iron floating between the lighter slag and the heavier lead. While in the melted state the slag, metallic sulphides, and lead may be either tapped at their respective levels and withdrawn, or the lead alone may be drawn off from the bottom of the crucible, leaving the slag and metallic sulphides to solidify in the crucible in their relative positions. In either event, the metallic sulphides, separated from the slag and metallic lead, constitute, according to the testimony, what is known as matte.

On the hearing before the board it was stipulated that the importations covered by the several protests were mattes, and that "matte" and "regulus" are interchangeable terms having the same meaning.

From the analyses submitted to the board and admitted to be correct it appears that the different mattes covered by the several protests contained the following percentages of metal and sulphur:

Protest No. 713217: Lead, 38.30; copper, 38.35; iron, 0.3; sulphur, 13.35.
Protest No. 713218: Lead, 17.20; copper, 18.40; iron, 28.00; sulphur, 20.80.
Protest No. 713219: Lead, 17.80; copper, 18.59; iron, 25.6; sulphur, 16.57.
Protest No. 724769: Lead, 23.50; copper, 48.3; iron, 5.9; sulphur, 15.10.
Protest No. 724770: Lead, 38.80; copper, 38.57; iron, 0.5; sulphur, 13.0.
Protest No. 724772: Lead, 18.80; copper, 17.91; iron, 28.07; sulphur, 17.40.

The admitted facts leave only one question to be determined, and that is whether the goods may be properly considered as *copper* mattes. If they are copper mattes, then under the stipulation that regulus is a matte, the merchandise was clearly admissible free of duty as regulus of copper.

Heinrich O. Hofman, a witness for the importer, testified that in mattes of the composition established by the analyses the value of the copper largely predominated, and that such mattes would be sent to the copper department of the reduction works for treatment. This testimony was corroborated by importer's witness Ledoux, who stated that he had sold hundreds of thousands of tons of mattes, and that mattes containing 38 per cent lead, 38 per cent copper, 13 per cent sulphur, and a small percentage of iron would be purchased on the basis of the copper value only. Colcord, a practical metallurgist and assistant superintendent for 15 years of smelting and refining plants, testified for the importer that copper was worth four times as much as lead, and that in smelters with which he was connected no attempt at all was made to recover the lead found in such mattes as those imported. According to this witness, the percentage of lead found in the goods imported was a detriment to the mattes and reduced their value.

The Government witnesses agreed with those of the importer that mattes of the kind in controversy were purchased for the copper which they contained and that any lead recovered from them would be a secondary matter. Indeed, Willet S. Morse, one of the Government witnesses, testified that the recovery of the lead contained in mattes such as those in question was a recent development in smelting and refining operations and that it had not yet passed the experimental stage.

From the testimony on both sides of the case it would seem, therefore, that the mattes under consideration are valuable chiefly, if not exclusively, for the copper they contain, and that if they are to be differentiated in any way from mattes in general they should be designated as copper mattes.

But, however that may be, it is established by the uncontradicted testimony of Ledoux and Colcord that mattes containing the per-

centages of copper, lead, iron, and sulphur found in the importation were known to the wholesale trade of the country and designated by it at and prior to the passage of the tariff act of 1909 as copper mattes. To the same effect was the testimony of Willet S. Morse, executive officer of the Perth Amboy branch of the American Smelting & Refining Co. and a Government witness, who stated that the goods imported were copper mattes containing lead.

In our opinion the goods involved in this appeal are copper mattes and are entitled to free entry as regulus of copper, inasmuch as the terms "copper mattes" and "regulus of copper" have admittedly come to mean the same thing.

The decision of the Board of General Appraisers is therefore *affirmed*.

(T. D. 34938.)

Stem glassware.

UNITED STATES *v.* BURLEY & TYRRELL CO. (No. 1369).

1. BOARD'S FINDING ON JUDICIAL NOTICE TAKEN.

The question at issue was whether the stem or the bowl of the imported glassware constitutes value in chief of the merchandise. The relative values were not shown by the testimony. Evidence taken on the hearing of other protests and regarded as material must be offered and received in conformity with established rules and after opportunity has been afforded counsel to reexamine or cross-examine witnesses.

2. IBID.

And as there was no proof actually before the board upon which a conclusion could be rested that molded and not blown glass was the component material of chief value, the knowledge of the board itself could not support its conclusion.

United States Court of Customs Appeals, November 18, 1914.

APPEAL from Board of United States General Appraisers, Abstract 35264 (T. D. 34321).

[Reversed.]

Bert Hanson, Assistant Attorney General (*Leland N. Wood*, special attorney, of counsel), for the United States.

Curie, Smith & Maxwell (*Thomas M. Lane* of counsel) for appellee.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the court:

Certain glassware imported at the port of Chicago was classified by the collector of customs as composed in chief value of blown glass and assessed for duty at 60 per cent ad valorem under the provisions of paragraph 98 of the tariff act of 1909, which, in so far as pertinent, reads as follows:

98. Glass bottles, * * * and all articles of every description, including bottles and bottle glassware, composed wholly or in chief value of glass *blown either in a mold or otherwise*, * * * sixty per centum ad valorem; * * *.

The importer protested that the goods in question were not composed in chief value of blown glass and claimed that the merchandise should have been assessed for duty at 45 per cent ad valorem as manufactures of glass under paragraph 109 of said act which, in so far as applicable, reads as follows:

109. * * * All glass or *manufactures of glass* or paste, or of which glass or paste is the component material of chief value, not specially provided for in this section, forty-five per centum ad valorem.

The Board of General Appraisers found that the importation was not composed wholly or in chief value of glass blown either in the mold or otherwise and sustained the protest of the importer. The Government appealed, and now contends that the decision of the board should be reversed on the ground that the evidence adduced at the hearing was insufficient to justify the conclusion that the merchandise in question was not in chief value of blown glassware, as found by the collector.

As we read the record, the evidence shows that the bowl of the glassware is blown by an apprentice. The stem and foot are then molded by skilled workmen, either from the hot glass drawn from the bottom of the bowl or from separate pieces of hot glass which are subsequently attached.

From the fact that the bowl is blown by an apprentice and that the stem and foot are shaped by a skilled artisan it might be inferred that the cost of the labor of blowing the bowl was less than the cost of the labor of molding the stem and the foot, but from those relative values, standing alone, it can not be deduced that the stem and foot were the components in chief value of the goods imported. In determining the constituent of chief value entering into the composition of any article of merchandise not only the value of the labor employed in making such constituent but also the value of the material used in its manufacture, must be taken into account. To overcome the classification of the collector and to rebut the presumption of correctness attaching to his decision, it was therefore incumbent on the importer to show not only the value of the labor employed in making the blown glass and the molded glass, but also the value of the material actually employed in the blown and in the molded components of the merchandise.

According to the testimony, the bowls of some stem glassware contains more glass than that found in the stem and foot. In others, however, more glass is found in the stem and foot than is found in the bowl. To which particular class the importation belongs was not shown by the evidence, and we are left without information as to the relative quantities of glass used in making the bowls and the stems and feet of the glassware imported. Witness Coleman did

testify that "the cost of the article chiefly is in the making of this foot and this stem," but whether he meant by that the cost of the labor alone or the cost of both labor and material is not at all clear. Inasmuch as the witness, however, in the testimony which preceded the statement just referred to, confined himself to the value of the labor and failed to specify which component of the importation contained the greater quantity of glass, we incline to the opinion that he was testifying to the relative values of the labor and not to the relative values of the labor and material. In this view we are confirmed by the finding of the board that the relative values of the blown and molded glass were not shown and by the fact that the decision appealed from seems to have been based not on the testimony but on the knowledge of the board that blown glass was not chief value. Whether that knowledge was derived from the trial of similar protests in other cases or from long experience in dealing with stem glassware does not appear. But, whether derived from one source or the other, such knowledge was not competent evidence which could be legally made the basis of the board's decision, and it therefore must be disregarded on appeal. Evidence taken on the hearing of other protests and regarded by the board as material to the determination of a pending controversy must, before it can be considered by the board, be offered and received in evidence in conformity with the rules in such cases made and provided and after an opportunity has been afforded to counsel to reexamine or cross-examine the witnesses. Rule 34, Board of General Appraisers; United States *v.* Oberle (1 Ct. Cust. Appls., 527, 528; T. D. 31545); United States *v.* Lun Chong & Co. (3 Ct. Cust. Appls., 468, 469; T. D. 33041).

In this case the component material of chief value was not a matter of which the board could take judicial notice, and the board's expert knowledge of the merchandise, if it had any, could not of course be utilized by it in reaching a decision. To hold otherwise would deprive the protestants of the right of cross-examination of adverse witnesses and would effectually block the review by this court of the facts on which the decision was based.

As, in this case, the knowledge of the board, whether derived from its own experience or from testimony adduced at other hearings, can not be considered as evidence, and as there was no evidence showing the relative values of the constituent parts of the merchandise, we think the board had nothing before it upon which it could safely or legally rest the conclusion that molded and not blown glass was the component material of chief value.

The decision of the Board of General Appraisers must therefore be *reversed.*

(T. D. 34939.)

Cork bark, unmanufactured.

UNITED STATES *v.* JOHNS-MANVILLE CO. (No. 1376). UNITED STATES *v.* ARMSTRONG CORK CO. (No. 1377).

CLIPPINGS OR SHAVINGS OF CORK BARK.

It is immaterial whether the clippings or shavings of cork bark here be deemed waste or not. A review of the legislation affecting the subject matter, of the practice at the customs, and of pertinent judicial decisions makes it clear these cork clippings and shavings were meant to be, and were, included within the provisions of paragraph 547, tariff act of 1909, and so were entitled to free entry.

United States Court of Customs Appeals, November 18, 1914.

APPEAL from Board of United States General Appraisers, G. A. 7541 (T. D. 34276).

[Affirmed.]

Bert Hanson, Assistant Attorney General (*Charles E. McNabb*, assistant attorney, of counsel), for the United States.

Allan R. Brown for appellees.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

DE VRIES, Judge, delivered the opinion of the court:

These appeals concern importations at the port of New York of a variety of merchandise, which has been appropriately divided into three general classes:

1. Large pieces or sheets of the bark of the cork tree of inferior quality, either the first, or what is known as "virgin" bark, or later growths which are inferior in grain, and all of which are used to be ground into materials for cork carpets or linoleums and the manufacture of cork articles.

2. Small pieces or chunks of cork bark which have either been broken in handling through accident or have resulted from the trimming of sheets of the same.

3. Various small pieces, clippings or shavings of cork bark or cork sheets and squares, fragments, from which corks or cork disks or other manufactured cork articles have been cut, all constituting the residuum arising from the manufacture of various cork articles.

The several classes were indiscriminately mixed in the same bales as imported, and while there has been no serious contention upon the part of the Government that classes 1 and 2 are dutiable, the entire importation was rated for duty as mixed goods, part dutiable and part nondutiable according to the established rule. United States *v.* Ranlett & Stone (172 U. S., 133–147); United States *v.* Waterhouse (1 Ct. Cust. Appls., 353–359; T. D. 31452); United States *v.* Strauss & Co. (3 Ct. Cust. Appls., 180–182; T. D. 32464, 3 Ct. Cust. Appls., 325–327; T. D. 32621).

Under that well-settled rule the entire importation was assessed as waste not specially provided for under the provisions of paragraph 479 of the tariff act of 1909. The importers protested, claimimg the entire importation entitled to free entry under the provisions of paragraph 547 of the act as "cork wood, or cork bark, unmanfactured."

Counsel for the Government has devoted able argument to the point that the merchandise described as class 3 is cork waste resulting from the manufacture of cork blocks or squares and various cork articles, and as such dutiable. In our view of the case the competing provisions of the tariff law render the question of whether or not the merchandise is waste unimportant and unnecessary of decision. It may be assumed, in our view, that the merchandise is cork waste. The controlling question in the case is, Are the provisions of paragraph 547 of the free list sufficiently broad to include this merchandise? If so, obviously, whether or not cork waste, it is more specifically provided for therein than as waste under paragraph 479 and entitled to free entry.

The determinative issue in the case, therefore, is, Is the merchandise described in our classification 3 within the scope and intent of paragraph 547 of the free list? Concededly if that merchandise is so included, those classes described in 1 and 2 are likewise included. It will be helpful to have before us and bear in mind the exact method of the growth and production of the importations and their uses. A concise exposition of these facts is set forth in King *et al. v.* Smith (14 Fed. Cas., 551–552, Case 7806), as follows:

The following facts appeared by the testimony: The cork tree is a species of oak, growing in forests in Spain, Portugal, and the south of France. There is an inner bark through which exudes a gummy substance, which, in the course of every seven years, forms a second bark, completely covering the inner one. This second bark is the corkwood of commerce. Outside of it there forms a thin, but hard and fibrous, covering, which is useless. The cork crop is harvested by stripping the trees, at the maturity of the second bark, of that bark, leaving the inner bark untouched. The outside of the cork, as it comes off, is covered with the fibrous covering called the "back." The inner surface is rough and discolored and is called the "belly." The cork comes off in long strips, curved from side to side, with irregular ends and edges, formed by the strokes of the ax and by fracture of the material as it is pried off. In this condition it is not fit for use nor for sale and is not exported. It is first boiled or steamed to soften it, then flattened under pressure, and the back partially scraped off and the edges trimmed off with knives. The slabs thus flattened, trimmed, and scraped are then packed in bales and bundles and exported in that shape as raw material. When again steamed and softened and the remains of the back scraped off these slabs may be cut up and made into floats, soles, life preservers, inkstands, artificial limbs, and the like. The trimmings from the edges may be made into cork stoppers and, as a step in the process, may be cut into smaller blocks, called "squares" or "quarters." Cork stoppers are made either from these cork squares or quarters by hand or machinery. Cork stoppers are also made by cutting the flat slabs into long strips of suitable size, from which the finished corks may be cut by

a blow from a perpendicular punch or by a machine like a turning lathe; or the strips may again be reduced to squares or quarters, which latter are made into stoppers by hand or (in this country) by machinery.

In this ascertainment it will also be of value to have before us and contrast the entire congressional language upon the subject matter as elucidative of the differentiations of this merchandise and parts thereof in the mind of Congress at enactment. This legislation is particularly instructive because it discloses a complete scheme of duties and grants of free entry as to this subject matter with precisely drawn lines of differentiation. The paragraphs contrasted are:

429. Cork bark cut into squares, cubes, or quarters, eight cents per pound; manufactured corks over three-fourths of an inch in diameter, measured at larger end, fifteen cents per pound; three-fourths of an inch and less in diameter, measured at larger end, twenty-five cents per pound; cork, artificial, or cork substitutes, manufactured from cork waste or granulated cork, and not otherwise provided for in this section, six cents per pound; manufactures, wholly or in chief value of cork, or of cork bark, or of artificial cork or cork substitutes, granulated or ground cork, not specially provided for in this section, thirty per centum ad valorem.

547. Cork wood, or cork bark, unmanufactured.

Thus while literally the lexicographic authorities agree that "cork" and "cork bark" are used interchangeably, which agreement is further confirmed by the understanding of trade and commerce, as shown by this record, this legislative scheme plainly shows that Congress had them in mind and specifically mentioned them as different tariff entities.

Upon reading the two paragraphs together the congressional purpose is unmistakable. There is an elaborate and detailed effort to precisely name all classes of this merchandise rated for duty and to prescribe the appropriate rate thereupon according to that description and its exact condition of manufacture or advancement in manufacture. There is an equally evident purpose to give free entry for the materials for these manufactures. Thus Congress had in mind and made dutiable with great exactness and marked differentiation, in accordance with the constructive processes applied thereto, "cork bark" in squares, cubes, or quarters, "manufactured corks" according to size, "artificial cork" and "cork substitutes," "cork waste," and "granulated cork," "manufactures" in chief value of "cork" or "cork bark," and "granulated or ground cork." Plainly, in this nomenclature Congress treated "cork" as something different but made from cork bark. It uses the word solely with reference and applicable to things constructed from cork bark. It uses the words "cork bark" as expressive of a material out of which cork squares, cork, granulated cork, and other cork articles are made. The paragraph shows Congress had "cork waste" in mind, for it is specifically mentioned. It is mentioned as a material out of which cork articles are made. Yet having it in mind, having mentioned it

as a material, Congress did not in this carefully and elaborately drawn scheme making expressly dutiable all cork articles make cork waste expressly dutiable. Neither is there any general language in the dutiable paragraph which by any construction embraces it. The natural inference, therefore, is, Congress having cork waste expressly in mind, not having made it dutiable in this exhaustive scheme of legislation and having expressly named it therein as a material only, had it in mind as a raw material and intended to relegate it to the raw material or free-list provision as "cork wood, or cork bark, unmanufactured."

That being the apparent intent of Congress, is the language employed sufficient for that purpose? We think it is. The legislative concept assigns to this paragraph that scope which will include all cork materials out of which the advanced cork manufactures and articles mentioned in paragraph 429 are made. The construction, therefore, which effectuates that purpose without violence to its language should be adopted. The words "cork wood" and "cork bark" are not necessarily interchangeable. Both being used in the paragraph the legal inference is that they are not. Cork wood refers more to the substance, while cork bark naturally refers to a form of that substance at one stage of its existence. Thus the bark as it comes from the tree would be cork bark in that form, but it is composed of a woody substance or composition known as cork wood. When the bark is made into a bottle cork it ceases, of course, to be cork bark, but remains cork wood in the tariff sense as descriptive of the substance or wood out of which the cork is made. This view of the natural significance of the terms not only gives a distinct meaning to all the words of the statute but also makes the term "cork wood" descriptive and inclusive of cork waste because all cork waste is of the woody substance known as cork wood. This generic scope given the meaning of "cork wood" explains why it is not used in paragraph 429 coextensively and interchangeably with cork bark. It naturally includes all the articles more specifically provided for in paragraph 429, and it therefore appropriately occurs only in the general residuum provision, thereby completing this inclusive code of law upon cork materials and articles.

Nor is this view at variance with a consistent line of decisions by this court. The merchandise chiefly questioned is the residuum of cork squares and plates, dutiable under paragraph 429, left after corks and disks have been cut therefrom. While these squares and disks were dutiable articles as such, after the corks and disks were cut away, the residuum ceased to be such, for it ceased to be "cork bark cut into squares, cubes, or quarters." Nor was it dutiable under that paragraph as "manufactures * * * of cork bark," for the reason that it in no wise responds to the call and definition

of a manufacture. It is merely the residuum of a consumed manufacture. It has no name, it is not by the processes applied thereto fitted for a purpose or been put upon the course of manufacture toward any particular purpose, is fit only to be remanufactured into some article other than that which it was originally designed to be made into, and has no value, condition or processing, which makes it useful or usable other than as the raw material from which it originated. It is a cork wood or substance.

The competing statutes and the merchandise are essentially the same in principle as with the fur clippings in United States *v.* Hatters' Fur Exchange (1 Ct. Cust. Appls., 198; T. D. 31237), held by this court to be dutiable as "furs, undressed"; and the reclaimed rubber in United States *v.* Michelin Tire Co. (1 Ct. Cust. Appls., 518; T. D. 31544), held dutiable by this court as "india rubber, crude, fit only for remanufacture"; and the undressed raw jute rejected by carding machines held by this court to be "jute, unmanufactured," in Salomon Bros. & Co. *et al.* (2 Ct. Cust. Appls., 431; T. D. 32196); and the tobacco scrap consisting of cigar clippings and pieces broken from the tobacco where cigars were manufactured held by the Supreme Court of the United States in Seeberger *v.* Castro (153 U. S., 32) to be dutiable as unmanufactured tobacco.

Other considerations aside, the record presents a case peculiarly well within the rule of long continued customs practice. The tariff acts of May 22, 1824, and July 30, 1846, had provided *eo nomine* duties upon "corks." In the tariff act of June 30, 1864, this provision first made its appearance. The *eo nomine* provision for "corks" was dropped and the competitive provisions inserted: "On cork, bark or wood, unmanufactured," 30 per cent ad valorem; "on corks, and cork bark, manufactured," 50 per cent ad valorem. By the tariff act of July 14, 1870, the latter provision was repealed by the enactment of a provision in the free list in the very words of the free-list provision here in controversy, to wit, "cork wood, or cork bark, unmanufactured." The case of King *et al.* *v.* Smith, *supra*, arose under and concerned this provision of the free list of the tariff act of 1870. Cork squares and cork quarters were assessed for duty. The importers claimed free entry for them as cork, unmanufactured. The report of the decision notes "the plaintiffs relied on the practical construction put on the tariff of 1864 by the Government," and the court instructed the jury that the legal presumption was that Congress intended to include the same goods by these phraseologies and that if they found the practice under that act included these goods within that free-list provision they should find for the plaintiff. The jury so found. The decision leaves a strong inference that the customs practice from 1864 to 1871 was to admit even cork squares and quarters free of duty as cork wood, or cork bark, un-

casting process but not made up into articles, shall pay two-tenths of one cent per pound more than the rate imposed upon the castings of iron and cast-iron plates hereinbefore provided for.

The Board of General Appraisers sustained the protest, and the Government appealed.

The merchandise was returned by the appraiser as "cast-iron nickled and steel-nickled finished parts of sewing machines." At the hearing before the board the evidence established that the articles in question were eccentrics for the Star sewing machine, and that such eccentrics were made of cast iron, drilled, reamed, and nickel-plated.

We are of the opinion that the operation of paragraph 147 is limited to castings *made wholly of cast iron*, and that the terms of the paragraph are not broad enough to cover articles which are made of cast iron and some other metal. This view we think is fully supported by the circumstances which led to the passage of paragraph 147 and to the change which that paragraph accomplished in the laws which preceded it. In the tariff acts of 1883, 1890, 1894, and 1897, castings made of iron were either provided for by name or were covered by the general designation "castings of iron." There was, however, no specific enumeration of castings of iron or cast-iron plates advanced in condition by processes or operations subsequent to casting, and, by reason of that fact, the board and the courts uniformly held that castings of iron and cast-iron plates advanced in condition by machining, polishing, drilling, cutting, planing, boring, and like operations were not dutiable as castings, but as manufactures of metal at 45 per cent ad valorem. T. D. 24604, T. D. 26478, T. D. 28276, Lehigh Manufacturing Co. *v.* United States (153 Fed. 596), Bromley *v.* United States (156 Fed. 958), Prosser *v.* United States (1 Ct. Cust. Appls., 29, 30; T. D. 30856).

Paragraph 147 of the tariff act of 1909 changed the provision covering iron castings in prior acts, first, by adding to the enumeration castings of iron and cast-iron plates advanced in condition; second, by imposing upon such advanced castings an additional duty of two-tenths of 1 cent per pound; and, third, by providing that castings of iron, cast-iron plates, and other specifically enumerated articles should be wholly of cast iron. That amendment, in the light of the law in force and the decisions rendered at the time of its passage, removed castings of iron and cast-iron plates advanced from the category of "manufactures of metal," gave them the status of castings of iron with a duty slightly greater than that imposed on ordinary castings, and limited the operation of the paragraph to manufactures which were composed wholly of cast iron.

True, the limitation "wholly of cast iron" was placed in the first clause of the paragraph and not in the second, but as that limitation

affected castings of iron and cast-iron plates in general, and as castings of iron and cast-iron plates advanced in condition were, under the amendment, none the less castings of iron and cast-iron plates, the words "wholly of cast iron" became as much applicable to the enumeration of the second clause as to the enumeration of the first. Even if the words "wholly of cast iron" had been entirely omitted from the paragraph, we incline to the belief that the designation, "all castings of iron or cast-iron plates which have been chiseled, drilled, machined, or otherwise advanced in condition by processes or operations subsequent to the casting process," covered at best only such castings as were improved after casting by the expenditure of labor, and not those which were presumably bettered by the addition of material other than cast iron. But however that may be, Congress, in our opinion, especially confined the operation of the paragraph under consideration to manufactures wholly of cast iron, and from that it follows that goods made up of cast iron and some other metal are not dutiable as castings of iron advanced in condition.

The goods involved in this appeal were undoubtedly originally wholly of cast iron, but subsequent to the casting they were plated with nickel, and must therefore be considered as manufactures composed of cast iron and nickel. Consequently they are not covered by paragraph 147 and are strictly within the terms of paragraph 199, which lays a duty of 45 per cent ad valorem on articles or wares partly or wholly manufactured, not specially provided for and composed wholly or in part of metal.

The decision of the board seems to have been based on the decision of this court in the case of United States *v.* Leigh & Butler (4 Ct. Cust. Appls., 304; T. D. 33517). That case, as we see it, is not applicable to the facts of this case, for the reason that the merchandise there involved was composed wholly of iron and not of iron and nickel.

The decision of the Board of General Appraisers is *reversed.*

(T. D. 34941.)

Gloves.

ALTMAN & CO. *v.* UNITED STATES (No. 1384).

1. PRACTICE.

At the trial importers' counsel stated that as to certain protests no samples of the gloves covered by them could be had, and they were abandoned. Subsequently, however, by stipulation these protests were reopened, and it was agreed the rate on the goods in question should be determined by the rule laid down in the Wertheimer case. This became an agreed statement of facts, and the rule in the Wertheimer case should have been applied—United States *v.* Wertheimer (4 Ct. Cust. Appls., 338; T. D. 33528).

2. LEATHER GLOVES, HAND EMBROIDERED.

The second class of gloves bore three-point embroideries that were hand stitched. Each of the three points was stitched by the use of only two separate threads, but in each point the two threads are continued so as to form three or four rows or lines. As to these, United States *v.* Wertheimer (4 Ct. Cust. Appls., 338; T. D. 33528) rules, and the doctrine of *stare decisis* applies.

United States Court of Customs Appeals, November 18, 1914.

APPEAL from Board of United States General Appraisers, Abstract 34943 (T. D. 34247).

[Reversed.]

Allan R. Brown for appellants.

Bert Hanson, Assistant Attorney General (*Charles E McNabb*, assistant attorney, of counsel), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MARTIN, Judge, delivered the opinion of the court:

The merchandise now upon appeal consists of embroidered leather gloves which were imported under the tariff act of 1909.

The collector assessed the importations with appropriate primary duty, and in addition thereto assessed a cumulative duty of 40 cents per dozen pairs under the last clause of paragraph 459 of the act.

The importers protested against the cumulative duty, and their protest was submitted upon evidence to the Board of General Appraisers. Upon consideration the board overruled the protest and the importers now prosecute their appeal.

The following is a copy of the pertinent parts of paragraph 459:

459. In addition to the foregoing rates there shall be paid the following cumulative duties: * * * on all gloves stitched or embroidered, with more than three single strands or cords, forty cents per dozen pairs.

The present issue, therefore, is whether the imported gloves are stitched or embroidered with more than three single strands or cords, within the meaning of the cumulative provision just above copied.

The gloves in question are of two classes. The first class consists of certain items marked "C" upon the invoices, covered by protest No. 674320. It appears from the record that at the trial before the board the importers' counsel made the following statement relative to this protest:

Mr. BROWN. Here I notice protests 666619 and 674320. We could obtain no samples nor identify the embroidery; those are abandoned.

There was no testimony offered at the trial relative to the protests thus abandoned. Afterwards, however, the following written stipulation, signed by counsel for both Government and importers, was filed with the board and made part of the record:

In the matter of protests * * * 674320 * * * of B. Altman & Co.

Stipulations:

It is hereby stipulated and agreed between counsel for the importers and counsel for the United States that the above-entitled protests may be reopened for the purpose of filing this stipulation.

It is further stipulated and agreed that the items marked "C" on the left-hand margin of the invoices in the above-entitled protests cover Paris point gloves of the kind passed upon in the Wertheimer case (T. D. 33528).

It is further stipulated and agreed that the protests may be submitted after filing this stipulation.

After the filing of this stipulation the board entered its decision in the case, sustaining protest No. 674320 by number in one paragraph of the decision and overruling the same protest by number as abandoned in a later paragraph of the decision. This confusion doubtless resulted from clerical error in the drafting of the decision. The board later entered an amendment of the decision, whereby it struck out the part sustaining protest 674320 and retained the part which overruled the same as abandoned.

This ruling of the board was clearly erroneous. The abandonment of protest No. 674320 was opened up by the filing of the written stipulation above copied, and the facts therein conceded became an agreed statement of facts in the case. In the Wertheimer case, United States *v.* Wertheimer (4 Ct. Cust. Appls., 338; T. D. 33528, this court had held that the Paris point gloves in question were not subject to cumulative duty under paragraph 459 of the tariff act of 1909 as gloves stitched or embroidered with more than three single strands or cords. Inasmuch as the stipulation recited that the gloves marked "C" in protest No. 674320 were of the same kind as those passed on in the Wertheimer case, it became the right of the importers to have their protest sustained as to those items.

The second class of goods involved in the present appeal consists of certain leather gloves bearing three-point embroideries which were stitched by hand alone. Each of the three points was stitched by the use of only two separate threads, but in each point the two threads are continued so as to form three or four rows or lines.

It is contended by the Government that in case of hand-stitched gloves like these the proper method of counting the threads is to take the aggregate of all which compose the three points upon a single glove, and not those only which compose a single point upon a glove. According to this rule the gloves now in question would be classified as gloves stitched with more than three single strands or cords and be subject to the cumulative duty, whereas if the threads in a single point only be taken as determinative the opposite result would follow.

The provision for a cumulative duty upon embroidered leather gloves which appears in paragraph 459, *supra*, was incorporated in substantially similar terms in the tariff acts of 1890 and 1897, and it became the subject of much litigation. See United States *v.* Spielmann (1 Ct. Cust. Appls., 279; T. D. 31320), United States *v.* Perkins (1 Ct. Cust. Appls., 323; T. D. 31430), Carson *v.* United States (2 Ct. Cust. Appls., 105; T. D. 31656), United States *v.* Wertheimer & Co.

(2 Ct. Cust. Appls., 454; T. D. 32204), United States *v.* Germain (3 Ct. Cust. Appls., 321; T. D. 32620), United States *v.* Wertheimer & Co. (4 Ct. Cust. Appls., 338; T. D. 33528, and cases cited.)

In the Wertheimer case (4 Ct. Cust. Appls, 338, 343; T. D. 33528) the following conclusion upon the subject was announced for this court by Judge Smith:

> The record shows, without contradiction, that five classes of machines are used in the ornamentation of gloves and that the style of decoration is determined by the particular machine which has been employed in doing the work. For one kind of ornamentation a machine with a single needle and thread and carrying no bobbin or bobbin thread is employed; for another, a machine is used which is equipped with a needle and bobbin and two threads, one for the needle and one for the bobbin. A third variety of ornamentation is accomplished by a machine furnished with two needles and a bobbin and three threads, two for the needles and one for the bobbin, while a fourth and a fifth class of decoration is evolved by machines provided, respectively, with three needles and a bobbin and four needles and a bobbin and the appropriate number of threads.
>
> We think that when Congress laid an additional duty on gloves stitched or embroidered with more than three strands it had in contemplation the methods of manufacture and the machines actually employed by the industry in stitching and embroidering the backs of gloves and that it was the legislative intention that the question of additional duty should be determined by the number of threads really employed in doing the stitching or embroidering rather than by the number of rows or lines of decoration actually stitched. It appears from the testimony that the Paris point gloves here in dispute are ornamented on the back by a machine carrying two needles and a bobbin and employing not more than three threads. They are therefore not stitched with more than three single strands and are not, in our opinion, subject to the additional duty prescribed by paragraph 459. Whether the word "cord" was used in paragraph 459 in the sense of thread or to designate the raised effect produced by creasing and stitching the leather of a glove longitudinally into what is sometimes called a cord we do not pretend to say. If it was used as synonymous with thread, the gloves are not stitched with more than three cords. If it means the raised effect produced by stitching, it is plain from an examination of the exhibit that there are not more than three ribs or corded effects on the back of the glove.

The gloves involved in the foregoing case were ornamented with three points each, and each point was composed of three separate threads, stitched, however, into five lines or rows in every point. The court held that the gloves were to be classified under paragraph 459 in accordance with the number of separate threads composing an individual point. This decision directly negatives the Government's present contention. Nor was the Government's claim overlooked at the trial of the Wertheimer case, for it was argued by the counsel in that case and submitted to the court. The decision announced in the case was based upon the view that the style of the stitch employed in each point should determine the character of the embroidery and not the aggregate number of threads found in all of the points upon a given glove. It is true that the gloves now at bar differ from those involved in the Wertheimer case in the particular that the present

articles are hand stitched, whereas the former ones were stitched upon machines. It does not appear, however, that this fact alone should defeat the application of the rule announced in that case, for in either kind of stitching three or more separate threads may be employed in forming a single point, and the improbability that more than three separate threads would ever actually be used for one point in hand stitching should not alter the construction already placed by the court upon the much-disputed provision in question. To the contrary, the present case seems distinctly to invite the application of the rule of *stare decisis*.

The decision of the board is therefore *reversed*.

(T. D. 34942.)

Spar prisms.

UNITED STATES *v.* BAUSCH & LOMB OPTICAL CO. (No. 1401).

1. ROCK CRYSTAL.

Rock crystal is a colorless or nearly colorless transparent quartz, and quartz is not a carbonate of calcium but a dioxide of silicon.

2. NIKOLS OR NICOL PRISMS.

The importations of nikols or Nicol prisms are manufactured from the mineral substance known as carbonate of calcium, and, as articles or wares of that class are not otherwise provided for, these are dutiable at 35 per cent ad valorem under the provisions of paragraph 95, tariff act of 1909.

United States Court of Customs Appeals, November 18, 1914.

APPEAL from Board of United States General Appraisers, Abstract 35307 (T. D. 34355).

[Affirmed.]

Bert Hanson, Assistant Attorney General (*Leland N. Wood*, special attorney, on the brief), for the United States.

Submitted on record by appellee.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the Court:

Imported goods invoiced as spar prisms were classified by the collector of customs at the port of Rochester, N. Y., as articles composed wholly or in chief value of rock crystal and were accordingly assessed for duty at 50 per cent ad valorem under that part of paragraph 112 of the tariff act of 1909 which reads as follows:

112. * * * All articles composed wholly or in chief value of agate, rock crystal, or other semiprecious stones, * * * not specially provided for in this section, fifty per centum ad valorem.

The importer protested that the goods were in fact articles composed wholly or in chief value of earthy or mineral substances, and claimed that they were dutiable at 35 per cent ad valorem under the

provisions of paragraph 95 of the tariff act of 1909, which paragraph reads as follows:

95. Articles and wares composed wholly or in chief value of earthy or mineral substances, not specially provided for in this section, whether susceptible of decoration or not, if not decorated in any manner, thirty-five per centum ad valorem; if decorated, forty-five per centum ad valorem; carbon, not specially provided for in this section, twenty per centum ad valorem; electrodes, brushes, plates, and disks, all the foregoing composed wholly or in chief value of carbon, thirty per centum ad valorem.

The protest was sustained by the Board of General Appraisers.

The merchandise in question is a crystalline substance having the form of an oblique prism or solid, bounded by six quadrilateral planes, four of which constitute the sides and two the ends of the figure. All the side planes are parallel, and the two end planes make an oblique angle with the planes constituting the sides. The appraiser returned the merchandise as spar prisms and certified that the sample in evidence was representative of so-called "nikols" or "glan thompson prismen." It appears from an investigation of the standard authorities that nikols or Nicol prisms are the invention of William Nicol, a Scotch physicist, and are designed to increase the divergence of two rays of light so as to produce a single image. (Encyclopedia Britannica.) To make the Nicol prism, a rhombohedron of Iceland spar is first cut in two along a plane running from the lower line of one end plane to the upper line of the other. The two halves are then joined together by means of Canada balsam. (See Ganot's Physics and Standard Dictionary.) Iceland spar belongs to the calcite group of minerals, and the calcites are carbonates of calcium. (Text book of Mineralogy, Dana, pp. 354–355.) The chemist to whom the merchandise was referred by the board for a report as to whether it was rock crystal, reported in writing that it was "calcium carbonate crystal." Rock crystal is a colorless or nearly colorless transparent quartz, and quartz is not a carbonate of calcium, but a dioxide of silicon. (See Rock Crystal and Quartz; Standard Dictionary; Textbook of Mineralogy, Dana, pp. 324–325.) From this it is apparent that the article imported is not rock crystal, and as it is not contended that it is either agate, which is a kind of quartz or a semi-precious stone, we think it clear that the merchandise should not have been classified for duty under paragraph 112. On the evidence submitted to the board, we find that the nikols or Nicol prisms are manufactured from the mineral substance known as carbonate of calcium, and as articles or wares of that class are not otherwise provided for, we must conclude that the importation was dutiable at 35 per cent ad valorem under the provisions of paragraph 95, as claimed by the importer.

The decision of the Board of General Appraisers is *affirmed*.

(T. D. 34943.)

Electric-light bulbs shaped as fruits.

UNITED STATES *v.* WOLFF & CO. (No. 1402).

1. ELECTRIC BULBS, FRUIT SHAPED AND COLORED.

These electric-light bulbs, colored, and shaped as fruit, could only be doubtingly classified as fruit, and ny doubt should be resolved in favor of the importer. To hold otherwise would result in classifying these importations in all their variety at greatly varying rates of duty, and duties should be uniform upon uniform classes and kinds of goods.

2. MANUFACTURES OF METAL.

The goods were assessed by the board as "articles or wares * * * composed wholly or in part of iron, steel, lead, copper, nickel, pewter, zinc, gold, silver, platinum, aluminum, or other metal; * * *" under paragraph 199, tariff act of 1909. This assessment was proper. "Manufactures of metal" refers to the material and includes all the component classes of such by whatever distinctive name known.

United States Court of Customs Appeals, November 18, 1914.

APPEAL from Board of United States General Appraisers, Abstract 35162 (T. D. 34307).

[Affirmed.]

Bert Hanson, Assistant Attorney General (*Charles E. McNabb*, assistant attorney, of counsel), for the United States.

Comstock & Washburn for appellees.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

DE VRIES, Judge, delivered the opinion of the court:

The official sample of the imported merchandise the subject of this appeal is a small electric-light bulb of pear shape and color to be used in Christmas-tree decoration. While the official sample is thus confined, there is stipulated into the record other similar samples, which, however, are of a class of articles now so common in electric lighting and decoration that the court may well take judicial notice of them. It is proven in the record by testimony of the official customs examiner that "this merchandise is made to imitate about twenty-four varieties of fruits and flowers." The illustrative samples as well as common observation and understanding readily extends this category to berries, mushrooms, nuts, acorns, wreaths, automobiles, canoes, baskets of flowers, festoons, horns of plenty, vases, etc.

The crucial question is, Are these articles artificial or imitation fruit within paragraph 438 of the tariff act of 1909?

These importations are but illustrations of the comparatively new industry, approaching an art, of electrical lighting, taking the form of decoration or shading, adjusted and shaped to suit the situation, condition, and desired effects. On every hand this art finds its daily exposition in one form or another to suit the particular effect

sought to be accomplished. It may be for decorating and lighting Christmas trees, wherein harmony of effects as a part of a tree may require the lighting to be representative of fruit or nuts, or it may be in the shading of a room green or rose or other color or some other naturally appropriate effect according to the desired result. In such cases be it noted that in proportion to the other lighting agencies used in the room the colored, frosted, or decorative effect is lost, so that effective service and lighting makes the electric light itself, thus colored or decorated, the primary consideration. Its primary use is that of a lighting agency incidentally frosted, shaded, colored, or decorated, thereby adjusting and conforming the particular lighting scheme and effect desired. Such is equally true of all electrical lighting. So we observe electrical torch effects at the entrance of buildings, electrical flag displays from buildings, electrical baskets, canoes, automobiles, etc., as electrical light table decorations; electrical chariots, horses, bottles, human figures, wearing apparel, as electrical light advertisements, many of which are made beautifully and artistically realistic. These electrical light effects are made up of units of these variously colored or decorated electric-light bulbs, sometimes separately, sometimes collectively, some clear, others frosted, colored, and variously otherwise decorated, as may be appropriate to the particular effect to be produced.

On the other hand, in the same journey we observe stone, wood, and metal figures in the forms of fruit and flower effects, decorative of buildings, furniture, monuments, statues, lawns, etc. If we classify one of these classes of decorative articles as artificial or imitation fruit or flowers all should be so rated for duty.

We do not think it was the intent of Congress to assess duty upon such articles as artificial or imitation fruits and flowers. If that were the purpose of Congress, charged with the making of duties uniform, it would certainly have extended the provisions of paragraph 438 to include at least nuts and mushrooms, all of which representative articles are made, bought, and sold indiscriminately mixed with the artificial pears. Indeed one of the forceful reasons for the court denying that classification is that it would result in classifying these importations at greatly varying rates of duty. That construction of a tariff statute which will render duties uniform upon uniform classes and kinds of goods is greatly to be desired must be assumed to have been the Congressional purpose and should not be denied save for cogent and clearly convincing reasons.

Moreover, an inspection of these samples immediately suggests to the mind an electric-light bulb with lighting as its primary function and intended use. The shape is not uncommon to but of ordinary electric-light bulbs, pear shaped, and there is present in all its practicable and useful completeness the metal base with screw threads

into which is soldered a platinum wire and the other metal structures essential to and as exists in every electric-light bulb. They are electric lights colored as and fruit shaped, complete and ready for use, and as such we think not classifiable as artificial or imitation fruit. To classify them otherwise, at least, must be with many doubtful reservations. This doubt should be resolved in favor of the importer. Goat and Sheepskin Import Co. *et al. v.* United States (5 Ct. Cust. Appls., —; T. D. 34254), Woolworth *v.* United States (1 Ct. Cust. Appls., 120–122; T. D. 31119), United States *v.* Hatters' Fur Exchange (1 Ct. Cust. Appls., 198–202; T. D. 31237), United States *v.* Matagrin (1 Ct. Cust. Appls., 309–312; T. D. 31406), United States *v.* Harper (2 Ct. Cust. Appls., 101–105; T. D. 31655), American Express Co. *v.* United States (3 Ct. Cust. Appls., 475–479; T. D. 33121), United States *v.* American Bead Co. (3 Ct. Cust. Appls., 509–515; T. D. 33166), Newhall *et al. v.* United States (4 Ct. Cust. Appls., 134; T. D. 33410).

The board found metal to be the chief value of the importations and overruled the collector's assessment, as articles in chief value of blown glass are, under paragraph 98 of the tariff act of 1909, directing assessment as "articles or wares * * * composed wholly or in part of iron, steel, lead, copper, nickel, pewter, zinc, gold, silver, platinum, aluminum, or other metal, * * *" under paragraph 199 of said act. The Government contests this finding and contends for the former, upon the theory that while the aggregate metal content of the bulbs constitutes chief value, no single metal therein is such, and that but one of the kinds of component metal materials should be considered in this ascertainment.

The record shows the metal content composed of "metal base," "nickel," "copper," "platinum," and "solder," the proportion of each being stated.

This so-called "catchall" clause of the metal schedule in tariff legislation first appeared in the tariff act of May 2, 1792. If this theory of the Government be accepted in this case it will overturn the accepted and enforced construction of that paragraph and its successors from that date to the present, a period of over one hundred and twenty-two years. It is true that when there is a competing provision of the law which specifically singles out and mentions manufactures of, or a manufacture of, or *eo nomine* designates one of these or any specific metal, that quantity of such metal in the manufacture can not be weighed in and included as against the particular competing provision. Such is illustrated in G. A. 4839 (T. D. 22725). The doctrine of that case is aptly stated in the syllabus:

In ascertaining the chief component it is improper to group together *all* the components which are in their character wood *when any of them are separately provided for by name.*

Where, however, there is no such competing provision the uniform rule has been and is as applied by the Supreme Court of the United States in United States *v.* Klumpp (169 U. S., 209). The question was whether "worsteds" fell within the term "manufactures of wool." The court said:

> We think that the words "manufactures of wool," in paragraph 297, had relation *to the raw material* out of which the articles were made, and that as the material of worsted dress goods was wool, such goods fell within the paragraph—

and held worsteds such a material within the term "manufactures of wool." So "manufactures of metal" refers to the material and includes all the component classes of such by whatever distinctive name they may be known as distinguishing them from other kinds of metal. They are all metal. The statute, paragraph 481, refers to "each single component *material*" and not to each single component kind or class of a material. Indeed, did the statute so refer the rule here would be the same, for instead of manufactures of the individual metals composing this article being named in competing paragraphs they are all named specifically in this paragraph so far as their character is by the evidence disclosed, to wit, "nickel," "copper," and "platinum," the residue being provided for as "other metals."

It follows that the decision should be, and is, *affirmed.*

(T. D. 34944.)

Catgut or whip gut.

UNITED STATES *v.* SHELDON & CO. (No. 1406).

CATGUT, WHIP GUT, OR WORM GUT, WHEN MANUFACTURED.

This merchandise consists of various strands of gut twisted in the form of a rope or cable and then apparently coated with a light varnish-like material. It clearly falls within the description of a manufacture of catgut.—Fischer *v.* United States (5 Ct. Cust. Appls., —; T. D. 34477).

United States Court of Customs Appeals, November 18, 1914.

APPEAL from Board of United States General Appraisers, Abstract 35422 (T. D. 34416).

[Reversed.]

Bert Hanson, Assistant Attorney General (*Charles D. Lawrence*, special attorney, on the brief), for the United States.

Submitted on record by appellees.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the Court:

The merchandise in this case was assessed for duty as a manufacture of catgut or whip gut at 25 per cent ad valorem under paragraph 462 of the act of August 5, 1909, which provides a duty of 25 per cent on "manufactures of * * * catgut or whip gut or

worm gut." The protestant claimed free entry for the merchandise under paragraph 529 of the act which reads:

Catgut, whip gut, or worm gut, unmanufactured.

The report of the appraiser, in answer to the protest, states that "the merchandise in question is cable made of gut to be used similarly to belting. These cables come in lengths of approximately 100 feet."

The testimony of the importer's witnesses shows that he produced a sample which in no way tends to show that the merchandise is not correctly described in the report of the appraiser, except that he states the length to be about 50 feet instead of 100 feet. The merchandise is described by him as being about 50 feet long and about seven-sixteenths of an inch in diameter. In answer to the question, "Do you know what has been done to this—it is manufactured as it is—it is not just as it came out of the intestines?" stated, "It is in the crudest form I know of."

A further question was put by the general appraiser: "But it is not as it comes out of the animal—you do not claim that?" to which he replied, "No, sir. Q. Do you know what is done to it? A. No, sir."

An inspection of the article, however, discloses that it evidently consists of various strands of gut which are twisted in the form of a rope or cable and then apparently coated with a light application of some material in the nature of a varnish or oil. It is apparently well adapted to use for belting purposes, and requires no further manufacture for that purpose. The testimony of the witness falls far short of showing that the article imported is in its crude form. He does state that it is in the crudest form he knows, but this may be the crudest form of the witness's own importations. That it is the crudest form of catgut is clearly disproved by an inspection of the article itself.

We think the article clearly falls within the description of a manufacture of catgut. See Fischer *v.* United States (5 Ct. Cust. Appls., —; T. D. 34477).

The cases cited by the general appraiser in sustaining the protest do not go to the length of supporting the conclusion which was reached. The case T. D. 23640 describes the character of the merchandise involved in these cases as being gut of the silk worm, dried and cleaned, put up in bundles and intended to be manufactured into "snells" or "leaders" for fishing lines; also catgut strings intended to be made into surgical sutures, ligaments, etc. No article adapted to use had been manufactured of the material in the cases cited. In this case, as before stated, the article is adapted to use as belting without anything further being done to it. It falls well within the definition of a manufactured article.

The decision of the board is *reversed.*

(T. D. 34945.)

Viscose caps.

NEVIN *v.* UNITED STATES (No. 1408).

1. BOTTLE CAPS OF METAL.

"Bottle caps of metal" in paragraph 196, tariff act of 1909, is not to be deemed a term of exclusion forbidding classification by similitude thereunder.—Strauss & Co. *v.* United States (2 Ct. Cust. Appls., 203; T. D. 31946).

2. BOARD'S FINDING OF FACT ON REVIEW.

The board's conclusion here was a finding of fact, and such a finding will not be reviewed here unless the finding is wholly without evidence to support it or is clearly contrary to the weight of evidence.

3. IBID.

The uncontradicted testimony shows the especial design and use of the cap of the importation is to form an air-tight and air-sealed cap, whether for bottles or tubes, but metal caps do not adhere and do not effect a like purpose. These caps were not dutiable by similitude as metal caps.

United States Court of Customs Appeals, November 18, 1914.

APPEAL from Board of United States General Appraisers, G. A. 7554 (T. D. 34375).

[Reversed.]

Curie, Smith & Maxwell (*Thomas M. Lane* of counsel) for appellant.

Bert Hanson, Assistant Attorney General (*Charles E. McNabb*, assistant attorney, of counsel), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

DE VRIES, Judge, delivered the opinion of the court:

These importations consist of so-called viscose caps. They were returned by the appraiser at the port of New York as "bottle caps composed of viscose" and assessed for duty by the collector by similitude to "bottle caps of metal" under the provisions of paragraph 196, tariff act of 1909, reading as follows:

196. Bottle caps of metal, if not colored, waxed, lacquered, enameled, lithographed, or embossed in color, one-half of one cent per pound and forty-five per centum ad valorem; if colored, waxed, lacquered, enameled, lithographed, or embossed in color, fifty-five per centum ad valorem.

And paragraph 481, as follows:

481. That each and every imported article, not enumerated in this section, which is similar, either in material, quality, texture, or the use to which it may be applied, to any article enumerated in this section as chargeable with duty, shall pay the same rate of duty which is levied on the enumerated article which it most resembles in any of the particulars before mentioned; * * *.

They are claimed by appellants to be dutiable as nonenumerated manufactured articles under paragraph 480 of the same act. On appeal counsel for the importer at oral argument urged that the express language of paragraph 196, "bottle caps of metal," was such a term of limitation as *ex vi termini* excluded classification by simili-

tude thereunder of all articles not within its literal terms. This court, however, in Strauss & Co. *v.* United States (2 Ct. Cust. Appls., 203; T. D. 31946), laid down the rule that such exclusion would not be assumed or implied from mere descriptive or *eo nomine* language of a paragraph, but there must be express language of exclusion or of condition tantamount to the same. See also Fensterer & Ruhe *v.* United States (1 Ct. Cust. Appls., 93; T. D. 31110, at page 96 *et seq.*). These cases rule that issue here. The language of this paragraph is merely *eo nomine*, followed by expressed alternative conditions with one of which at least these importations are susceptible of compliance.

The Board of General Appraisers rested their decision upon similitude of use. They stated:

Now, as said paragraph 196 specifically provides for "bottle caps of metal," and as the caps or capsules here in controversy are composed of viscose, it is at once apparent that, at least so far as material, quality, or texture is concerned, there exists no similarity whatever between the two articles.

Therefore the collector's classification and assessment of the merchandise in suit must stand or fall on the answer to this question, Are these viscose caps or capsules similar in the use to which they may be applied to the bottle caps of metal covered by said paragraph 196? We think they are; and we believe our conclusion is amply supported by the testimony of the importer's own witness. Asked the question, "Could a metal bottle cap be used on such a tube?" he replied, "It could be used on the tube, yes; it could be—a bottle cap could be sealed on anything in the shape of a round neck, piece of glass, but it is a question of putting a cap on to evolve a purpose."

Now, while we do not concede that jars or tubes are by any means bottles, nevertheless is it not a fact that, if metal caps for bottles may serve the same purpose with respect to the tubes in question as do the viscose caps under consideration, the latter, by reason of their structure, form, and pliability, would serve the same function with reference to bottles as is performed by metal caps? Certainly the result sought to be accomplished is precisely similar in each case—that of sealing or covering the mouth or opening of the vessel.

Again, it is not essential that the vessel should be a bottle; to merely establish that the use for which the article is designed is similar to that for which bottle caps are employed is sufficient to fix its dutiable classification. The similitude provision in the statute plainly refers to a similarity in the employment of an article or its effect in producing similar results. Murphy *v.* Arnson (96 U. S., 131).

It is likewise unnecessary to establish a similarity in more than one particular. It is enough if there be a substantial similitude in any one of the particulars mentioned—material, quality, texture, or use. Arthur *v.* Fox (108 U. S., 125); Pittsburgh Plate Glass Co. *v.* United States (2 Ct. Cust. Appls., 389; T. D. 32162).

In Abstract 32871 (T. D. 33591) this board, in commenting upon the use to which articles similar to those here in question were employed, said:

The article is used in capping dental cement. It is form of a preparation of viscose which, while kept submerged in liquid, remains in a soft, pliable condition, and which, when put over the cork of a bottle and left to dry, shrinks, forming an air-tight and sealed cap for the bottle and its contents.

The conclusion of the board that there is no direct provision of the tariff law applicable to the merchandise and that the similitude

provision is the one applicable is a decision of a question of law. United States *v.* Hahn (91 Fed., 755), Herrman *v.* Arthur's Executors (127 U. S., 363).

Whether or not there was a similitude in use between bottle metal caps and these viscose caps was a question of fact for the board to determine, its conclusion being a finding of fact. Greenleaf *v.* Goodrich (101 U. S., 278), Herrman *v.* Arthur's Executors (127 U. S., 363).

It follows, the first proposition being undisputed, that the court will not review the finding of the board on that question of fact unless the finding is wholly without evidence to support it or is clearly contrary to the weight of evidence. United States *v.* National Aniline & Chemical Co. (3 Ct. Cust. Appls., 10; T. D. 32287), United States *v.* Reibe (1 Ct. Cust. Appls., 19; T. D. 30776), Holbrook *v.* United States (1 Ct. Cust. Appls., 263; T. D. 31317), Carson *v.* United States (2 Ct. Cust. Appls., 105; T. D. 31656).

We are of the opinion, however, considering the whole record and all its parts, that the finding is at least clearly contrary to the weight of the evidence. But one witness testified, and the board rests its decisions particularly upon a part of his testimony and comments upon its finding in another case.

As to the comparative uses of these caps, the witness testified that the articles are viscose caps imported in large jars packed in alcohol to preserve them; that when the alcohol evaporates or they are taken out they harden.

Q. The alcohol keeps it soft?—A. The alcohol keeps it soft.

Q. Will you please describe the manner of using these caps?—A. Well, there is a tube; we put them on a tube that has no neck at all, just a straight, long tube, and the reason why this cap is applicable for that tube is because when it is pulled over the top of the cork, over part of the tube, it hardens and adheres there. It is not like a metal cap that sets simply down on the neck of a bottle, but this has a gelatin appearance. We do not know whether it is gelatin or not, and for that reason it sticks on the tube, but it does not fit as you say, our expression about a bottle cap, it does not fit, it does not catch, adhere.

* * * * * * *

Q. Are these viscose caps used on bottles?—A. No; we do not——

Q. What are they used on?—A. Tubes.

Q. Test tubes?—A. Yes; tubes of a test appearance.

Q. Could a metal cap be used on such a tube?—A. It would not have the same—it would not be applicable at all.

Mr. BALDWIN. I ask that the answer be stricken out.

General Appraiser FISCHER. Strike out the answer.

The last question was repeated by the stenographer as follows:

Q. Could a metal bottle cap be used on such a tube?—A. It could be used on the tube, yes; it could be—a bottle cap could be sealed on anything in the shape of a round neck, a piece of glass, but it is a question of putting a cap on to evolve a purpose. It is not merely——

Mr. BALDWIN. You have answered the question.

Q. What material do these tubes contain?

Mr. BALDWIN. I object to that unless it is shown that the witness knows.

Q. Do you know?—A. Yes, I do know. They contain products which when put in a glass of water evaporate. These products absorb moisture from the air. They need a cap which will be impervious to the air and prevent any moisture absorbing through the cork.

Q. What would be the effect of moisture in the product?—A. It would break down the products, it would crumble them down.

Q. What is the purpose of using such a cap, Mr. Nevin, as this cap here, on such products as you describe?—A. Well, I have just answered that question. It is for the purpose of preventing air from getting through which it would undoubtedly with a metal cap, which can not be fastened—adhere.

Q. Would the air break down these products as well as the moisture?—A. Positively, yes.

* * * * * * *

Q. Do you know any use for them except that of air-tight sealing?—A. Air-tight sealing.

Q. Or capping a tube? A.—That is all we use it for. You can use them over anything for air-tight sealing, use them over a suppository or——

The witness further testified that these caps were put on by hand and could not be put on by machinery as are bottle caps.

The board, as quoted, deduces from this testimony:

Nevertheless, is it not a fact that, if metal caps for bottles may serve the same purpose with respect to the tubes in question as do the viscose caps under consideration, the latter, by reason of their structure, form, and pliability, would serve the same function with reference to bottles as is performed by metal caps?

We think the deduction unsupported by this record. The witness nowhere said that the uses of the caps were interchangeable. The most he could have been held to have said was that the metal caps "*could* be used on the tube, yes; it *could* be—a bottle cap *could be sealed on anything* in the shape of a round neck, a piece of glass, but it is a question of putting a cap on to *evolve a purpose.*" The witness did not in our opinion here state what is done practically or commercially with bottle caps, but what "could" be done, not commercially and practically, but perhaps experimentally or by physical possibility. There is not a word of testimony controverting the qualifying statement of the witness that these caps are to "evolve a purpose," later explained to be of "air-tight sealing." That also was the use the board found in Abstract 32871 (T. D. 33591), cited in its opinion as a precedent. Nor is the statement of the witness disputed (p. 9, record) that " it is for the purpose of preventing air from getting through, *which it would undoubtedly with a metal cap,* which can not be fastened—adhere."

So that it would appear uncontradicted that the especial use and design of this cap is to form an air-tight and air-sealed cap whether for bottles or tubes, and that metal caps do not adhere and do not effect this purpose. Common knowledge suggests that metal bottle

caps are either ornamental or used to protect and hold in place the cork of the bottle. Viscose caps are used to hermetically seal the contents of bottles or tubes; metal bottle caps are used to protect and hold in place the corks of bottles or tubes. The uses, therefore, are distinctly different. We are, therefore, of the opinion that the record does not sustain the finding of the board and that its decision should be, and is, *reversed.*

(T. D. 34946.)

Sufficiency of protest.

UNITED STATES *v.* SHELDON & CO. (No. 1415).

1. PROTEST—A CARDINAL RULE OF.

At the time he makes his protest the importer must have in mind the objection afterwards made at the trial, and must sufficiently, in view of all the circumstances, call the collector's attention to that objection.

2. PROTEST—WHEN INSUFFICIENT.

These several protests here were made at different dates, all relating to the same class of merchandise, and in each claim was made under paragraph 415, tariff act of 1909. This claim can not be said to direct the collector's attention to paragraph 420, nor do the facts warrant the opinion that paragraph 420 was in the mind of the importer when he claimed under paragraph 415.

United States Court of Customs Appeals, November 18, 1914.

APPEAL from Board of United States General Appraisers, Abstract 35500 (T. D. 34425).

[Reversed.]

Bert Hanson, Assistant Attorney General (*Charles E. McNabb*, assistant attorney, on the brief), for the United States.

Allan R. Brown for appellees.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

BARBER, Judge, delivered the opinion of the court:

The issue here is as to the sufficiency of certain protests, the material parts of which are hereinafter set forth. All these protests contain a column entitled "Description of merchandise," in which is inserted a statement as to the number of cases or other packages, followed by the words which are hereinafter quoted as describing the merchandise.

Protest 725587/32983 describes the merchandise as "cardboard" and alleges dutiability as "mftrs. of cardboard" at 35 per cent ad valorem under paragraph 415.

Protest 722623/30607 describes the merchandise as "mf. cardboard" and alleges dutiability as "mf. cardboard n. s. p. f." at 35 per cent ad valorem under paragraph 415.

Protest 707123/16073 describes the merchandise as "cardboard" and alleges dutiability as "mfrs. of paper n. s. p. f." at 35 per cent ad valorem under paragraph 415, or as "articles composed in chief value of paper with coated surface" under paragraph 411.

Protest 685077/74 describes the merchandise as "mf. cardboard" and alleges dutiability as "mftrs. of cardboard" at 35 per cent ad valorem under paragraph 415, or as "articles composed in chief value of paper with coated surface n. s. p. f." under paragraph 411.

Protest 693549/5322 describes the merchandise as "cardboard" and alleges dutiability as "mftr. of paper n. s. p. f." at 35 per cent ad valorem under paragraph 415, or as "articles composed in chief value of paper with coated surface" under paragraph 411.

Protest 699602/7427 describes the merchandise as "mf. cardboard" and alleges dutiability as "mfr. of paper n. s. p. f." at 35 per cent ad valorem under paragraph 415, or as "articles composed in chief value of paper with coated surface n. s. p. f." under paragraph 411.

Protest 683507/52750 describes the merchandise as "mftr. paper" and alleges dutiability as "mftrs. of paper n. s. p. f." at 35 per cent ad valorem under paragraph 415, or as "articles composed in chief value of paper with coated surface" under paragraph 411.

No claim is made that the merchandise is dutiable under paragraph 411, which is referred to in some of the protests.

Giving to the various abbreviations their natural import it is manifest that these protests fall into the following classes, so far as they contain a description of the importations and the claim as to proper classification:

(*a*) Three of the protests describe the merchandise as cardboard or manufactures of cardboard and aver that it is dutiable as "manufactures of cardboard."

(*b*) Two of the protests describe the merchandise as cardboard and aver that it is dutiable as a "manufacture of paper n. s. p. f."

(*c*) One of the protests describes the merchandise as a manufacture of cardboard and claims it is dutiable as a "manufacture of paper n. s. p. f."

(*d*) One of the protests describes the merchandise as a manufacture of paper dutiable as a "manufacture of paper n. s. p. f."

And all the protests refer to paragraph 415 as the one under which the merchandise is claimed to be dutiable and all claim 35 per cent ad valorem as the proper rate of duty.

Paragraph 415 specifically provides, among other things, for cardboard, which is declared to be dutiable at 35 per cent ad valorem. It also contains two other provisions for the same rate of duty, one upon certain press boards or press paper, and the other upon certain

wrapping paper, with a further proviso that certain paper, embossed, die cut, or stamped into designs or shapes, or certain other forms, is dutiable at the same rate.

Paragraph 420 provides that manufactures of paper or of which paper is the component material of chief value, not specially provided for, shall be dutiable at 35 per cent ad valorem.

Each of these seven protests bears a different date, and five contain an alternative claim in substance that the merchandise is dutiable as in chief value of surface-coated paper under paragraph 411.

It is unnecessary to review at length the great number of authorities in which the question of the sufficiency of protests has been considered.

It was held in substance in Bliven *v.* United States (1 Ct. Cust. Appls., 205) that one cardinal rule in construing a protest is that it must show fairly that the objection afterwards made at the trial was in the mind of the party at the time the protest was made and was brought to the knowledge of the collector to the end that he might ascertain the precise facts and have an opportunity to correct the mistake and cure the defect if it was one that could be obviated. This, in effect, has long been the doctrine enunciated by the Supreme Court of the United States. Davies *v.* Arthur (96 U. S., 148), Arthur *v.* Morgan (112 U. S., 495), United States *v.* Salambier (170 U. S., 621). See also Carter *v.* United States (1 Ct. Cust. Appls., 64; T. D. 31033) and Sonneborn's Sons *v.* United States (3 Ct. Cust. Appls., 54; T. D. 32348).

In the various cases where this principle has been upheld it will appear that in some the correct paragraph has been cited without mentioning the rate of duty; again, the correct rate has been mentioned without referring to the paragraph; and other discrepancies and infirmities have been considered and discussed. It has, however, uniformly been considered, as already suggested, that one great rule of construction is that *at the time he makes his protest the importer must have in mind the objection afterwards made at the trial* and must sufficiently, in view of all the circumstances, call the collector's attention thereto, so that he may consider and pass upon the same; and the determination of this case must stand or fall upon the application of that rule.

It is conceded here that the importers did not select the proper paragraph, but it was held by the board and is claimed by the importers that this was an inadventence; in other words, that the importers really meant to refer to paragraph 420 instead of 415. As already suggested, each of these protests bears a different date and five make an alternative claim under paragraph 411. As a matter of inference or argument the claim of the protestants would be more persuasive if it appeared that the alleged inadvertence had occurred

but once; but when we find, as here, seven protests bearing different dates, none however greatly removed from another in point of time, all having been made between December 19, 1912, and October 10, 1913, and all relating to the same class or kind of merchandise, it is strongly suggestive not of an inadvertence but of a deliberate purpose to claim under paragraph 415, and that this was the paragraph which was in the minds of the protestants at the time the protests were made, was the one upon which they then relied, and intended to rely at the trial. This view is strengthened by the fact that five of the protests, in the alternative, claim under paragraph 411, which tends to show that the protests were carefully and not hurriedly drawn. It is hard to believe that the claim under paragraph 415 was inadvertenly made.

Was the collector's attention fairly directed to paragraph 420? Of course the number of the paragraph to which he was referred was 415. He was advised, as evidently the entries in the case had advised him, that the merchandise was claimed to be in every case but one, cardboard or a manufacture of cardboard; that in three of the protests it was claimed to be dutiable as a manufacture of cardboard and in the other four as a manufacture of paper n. s. p. f. The exhibits in the case which are before us show that the background or the basic material is a relatively thick piece of cardboard upon which are raised letters said to be of metal. As to the composition of these letters no question is made. Paragraph 415 contains no express provision for manufactures of cardboard nor manufactures of paper by that name, but does contain, as already pointed out, a provision for cardboard and various forms of boards and paper with four separate provisions for duty at the rate of 35 per cent ad valorem, which is the identical rate claimed in the protests.

We think under the terms of the protests the attention of the collector was not directed to paragraph 420 just as we think that the provisions of paragraph 420 were not in the minds of the importers when the protests were made.

This view is somewhat confirmed by the fact that paragraph 420 refers to manufactures of paper or manufactures of which paper is the component material of chief value. The protests do not claim the merchandise to be manufactures of which paper is the component material of chief value, but simply as manufactures of paper, while the merchandise itself shows, the evidence is, and the report of the appraiser in each case was, that the merchandise was a manufacture of paper and *something else.*

We think is was error to hold these protests sufficient, and the judgment of the Board of General Appraisers is *reversed.*

(T. D. 34947.)

Sufficiency of protest.

UNITED STATES *v.* TROY LAUNDRY MACHINERY CO. (No. 1418).

PROTEST—WHEN INSUFFICIENT.

The protest here not only expressly refers the collector to a paragraph but avers the merchandise to be of a kind that is provided for in that paragraph alone, and claim is made thereunder. The protestant is bound by this specific allegation and his protest could not avail to give him the benefit of yet another and different paragraph of the law.

United States Court of Customs Appeals, November 18, 1914.

APPEAL from Board of United States General Appraisers, G. A. 7565 (T. D. 34457). [Reversed.]

Bert Hanson, Assistant Attorney General (*Charles D. Laurence*, special attorney, on the brief), for the United States.

Submitted on record by appellee.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

DE VRIES, Judge, delivered the opinion of the court:

This appeal may be determined by ruling as to the sufficiency of the protest. The material allegation of the protest it as follows:

We claim and insist that this merchandise is caustic potash, as specifically provided for at 1 cent per pound in paragraph 61 of the tariff act of August, 1909.

Paragraph 61 reads:

61. Caustic potash, or hydrate of, refined, in sticks or rolls, one cent per pound; chlorate of, two cents per pound.

The Board of General Appraisers held merchandise such as this entitled to free entry under paragraph 655 of the act, which reads:

655. Potash, crude, or "black salts"; carbonate of potash, crude or refined; hydrate of, or caustic potash, not including refined in sticks or rolls; nitrate of potash or saltpeter, crude; sulphate of potash, crude or refined, and muriate of potash.

The board upheld the sufficiency of the protest. The Government appeals. Much stress is laid by the board in its opinion upon the fact that the protest *eo nomine* counts upon "caustic potash."

If "caustic potash" were provided for *eo nomine* in but one of these paragraphs there might be much force in that position. Smith *et al. v.* Schell *et al.* (27 Fed., 648), Cummins *et al. v.* Robertson (27 Fed., 654), *In re* Austin *et al.* (47 Fed., 873). Being so provided for, however, in both paragraphs, at least the name being used in both as related to different kinds of the merchandise, the reason of the rule fails and it has here no application. Furthermore, the protest not only makes claim as to caustic potash but expressly directs the collector's attention to that "caustic potash, as specifically provided for * * * in paragraph 61 of the tariff act of August,

1909." The protest, therefore, not only cites the wrong paragraph but expressly refers the collector to a kind of merchandise provided for in that paragraph alone, and not provided for in paragraph 655. Of such a protest this court in Bliven *v.* United States (1 Ct. Cust. Appls., 205–208; T. D. 31239), said:

> The cardinal principle underlying the sufficiency of protests being that the protestant must *direct the mind of the collector to the appropriate provision of law.* It can not by any stretch of imagination be said that this requirement is satisfied when the protestant directs the mind of the collector to some other provision of law assessing a different rate of duty. Such is a more violent contravention of the requirement because it not only does not leave the mind of the collector free to determine for himself the appropriate provision, but carries his mind away from the applicable clause to an inapplicable one, and thus confuses the situation.

Oelrichs & Co. *v.* United States (3 Ct. Cust. Appls., 232; T. D. 32541).

The ruling rests upon the fundamental principle of pleading and practice, applicable also to customs protests, that where an importer states with specificness his objections he is limited thereby. He is bound by the allegations of his protest. Benjamin Iron & Steel Co. *v.* United States (2 Ct. Cust. Appls., 159; T. D. 31667), United States *v.* Danker & Marston (2 Ct. Cust. Appls., 462; T. D. 32208), Bowling Green Storage & Van Co. *v.* United States (3 Ct. Cust. Appls., 309; T. D. 32588), United States *v.* Park & Tilford (3 Ct. Cust. Appls., 350; T. D. 32907), United States *v.* Chattanooga Brewing Co. (3 Ct. Cust. Appls., 375; T. D. 32965), Strakosh *v.* United States (1 Ct. Cust. Appls., 360; T. D. 31453), *In re* Solvay Process Co. (134 Fed., 678), Herrman *v.* Robertson (152 U. S., 521), Presson *v.* Russell (152 U. S., 577), United States *v.* Curley *et al.* (66 Fed., 720), United States *v.* George Knowles & Son (126 Fed., 737), United States *v.* H. Bayersdorfer & Co. (126 Fed., 732), United States *v.* Fleitmann *et al.* (137 Fed., 476), Davies *v.* Arthur (96 U. S., 148).

Reversed.

(T. D. 34948.)

Emergency revenue law—Stamp tax.

Mail entries, Cat. Nos. 3419 and 3421, subject to the same stamp taxes as regular entries under act of October 22, 1914.

TREASURY DEPARTMENT, *December 1, 1914.*

SIR: The department is in receipt of your letter of the 4th ultimo inquiring whether an internal-revenue stamp should be required to be affixed to and canceled on so-called mail entries.

Under a ruling of the Commissioner of Internal Revenue such entries, being similar to the mail entries covered by T. D. 19636, T. D. 19726, and T. D. 19950, and the provisions of the act of October

22, 1914, in regard thereto, being similar to those of the act of June 13, 1898, mail entries, Cat. Nos. 3419 and 3421, are subject to the same stamp taxes as regular entries.

Respectfully, WM. P. MALBURN,
(103103.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Seattle, Wash.*

(T. D. 34949.)

Jacquard woven cotton cloth.

Appeal directed from decision of the Board of United States General Appraisers of October 21, 1914, G. A. 7618 (T. D. 34858), involving the classification of dress goods and shirtings woven on a Jacquard loom.

TREASURY DEPARTMENT, *November 30, 1914.*

SIR: I am in receipt of your letter of the 27th instant, inviting attention to the decision of the Board of United States General Appraisers of October 21, 1914, G. A. 7618 (T. D. 34858), wherein it was held that certain merchandise consisting of dress goods and shirtings woven on a Jacquard loom, which had been assessed with duty at the rate of 30 per cent ad valorem under paragraph 258 of the tariff act, was properly dutiable, as claimed by the importers, as cotton cloth woven figured, at the appropriate rate according to the size of the yarn used, under paragraph 252 of the said act.

In view of the importance of the issue and in harmony with your recommendation, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the decision, under subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, ANDREW J. PETERS,
(75852.) *Assistant Secretary.*
ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 34950.)

Crash toweling.

Appeal directed from decision of the Board of United States General Appraisers of October 7, 1914, G. A. 7608 (T. D. 34818), involving the classification of crash toweling in chief value of flax.

TREASURY DEPARTMENT, *December 1, 1914.*

SIR: I am in receipt of your letter of the 25th ultimo, inviting attention to the decision of the Board of United States General Appraisers of October 7, 1914, G. A. 7608 (T. D. 34818), wherein it was held that certain crash toweling composed in chief value of flax was properly dutiable at the rate of 30 per cent ad valorem under paragraph 283 of the tariff act of 1913 as "plain woven fabrics"

rather than at the rate of 35 per cent ad valorem under paragraph 284 of the said act.

In view of the importance of the issue and in harmony with your recommendation, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, under subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, ANDREW J. PETERS,
(95545.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 34951.)

Consolidation of customs districts Nos. 2 and 3, in the State of Vermont, with headquarters at St. Albans.

TREASURY DEPARTMENT, *December 1, 1914.*

To collectors of customs and others concerned:

The appended Executive order, dated November 22, 1914, abolishing customs districts Nos. 2 and 3 and creating a new district, to be known as No. 2, in the State of Vermont, with headquarters at St. Albans, is published for the information of all concerned.

(100000-2.) ANDREW J. PETERS, *Assistant Secretary.*

EXECUTIVE ORDER.

Under the provisions of the act of Congress approved August 1, 1914, making appropriations for the sundry civil expenses of the Government for the fiscal year ending June 30, 1915, the two customs collection districts in the State of Vermont (Nos. 2 and 3) are hereby abolished and a new district created, to be known as district No. 2, and to include all of the State of Vermont, with district headquarters at St. Albans, in which St. Albans, Burlington, Richford, Alburg, Swanton, Highgate, Newport, North Troy, Derbyline, Island Pond, and Beecher Falls shall be ports of entry, and the salary of the collector shall be $5,000 per annum. This order will become effective January 1, 1915.

WOODROW WILSON.

THE WHITE HOUSE, *21 November, 1914.*

[No. 2090.]

(T. D. 34952.)

Importations of cattle, etc., from Canada.

Amendment to B. A. I. Order No. 209, published in T. D. 34900, prohibiting the importation from Canada of cattle, sheep, other ruminants, and swine, revoked.

TREASURY DEPARTMENT, *December 1, 1914.*

To officers of the customs and others concerned:

The appended copy of amendment 3 to B. A. I. Order No. 209, which revokes amendment 2 to B. A. I. Order No. 209, prohibiting

the importation from Canada of cattle, sheep, other ruminants, and swine (T. D. 34900), is published for the information and guidance of customs officers and others concerned.

(56910.) ANDREW J. PETERS, *Assistant Secretary.*

(Amendment 3 to B. A. I. Order 209.)

UNITED STATES DEPARTMENT OF AGRICULTURE,

BUREAU OF ANIMAL INDUSTRY.

AMENDMENT 3 TO B. A. I. ORDER 209, REGULATIONS FOR THE INSPECTION AND QUARANTINE OF HORSES, CATTLE, SHEEP, SWINE, AND OTHER ANIMALS IMPORTED INTO THE UNITED STATES—REVOKING THE PROHIBITION UPON THE IMPORTATION FROM CANADA OF CATTLE, SHEEP, OTHER RUMINANTS, AND SWINE.

Effective on and after November 20, 1914.

UNITED STATES DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY.

Under authority conferred by law it is ordered that amendment 2 to B. A. I. Order 209, dated November 9, 1914, prohibiting the importation from the Dominion of Canada of cattle, sheep, other ruminants, and swine, be, and the same is hereby, revoked, effective November 20, 1914.

The effect of this amendment is to permit the admission of cattle, sheep, other ruminants, and swine into the United States from the Dominion of Canada in accordance with the regulations prescribed in B. A. I. Order 209, dated April 29, 1914, and effective July 1, 1914.

Done at Washington this 20th day of November, 1914.

Witness my hand and the seal of the Department of Agriculture.

[SEAL.] D. F. HOUSTON,
Secretary of Agriculture.

(T. D. 34953.)

Drawback on automobiles.

Drawback on automobiles manufactured by the Ford Motor Co., of Detroit, Mich., with the use of imported materials.

TREASURY DEPARTMENT, *December 1, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on automobiles and automobile parts manufactured by the Ford Motor Co., of Detroit, Mich., in whole or in part with the use of imported materials and parts and with the use of parts produced by domestic manufacturers in whole or in part from imported materials and parts and covered by drawback rates now existing or which shall be promulgated in the future under the conditions set forth in the sworn statement of the Ford Motor Co., dated October 20, 1914, transmitted herewith, and the sworn statements filed by domestic manufacturers in connection with drawback rates separately established.

The allowance shall not exceed the quantities of imported materials and parts appearing in the exported automobiles or parts of automobiles or used in the manufacture thereof, as the case may be, as shown by the aforesaid sworn statement of the Ford Motor Co. or provided for by drawback rates separately established covering the parts supplied to the Ford Motor Co., such allowance to be reduced according to the quantity of imported materials which the value of the waste will replace.

Supplementary sworn statements and schedules may be filed modifying the originals or showing the use of other imported parts, materials, or parts made from imported materials, new models of automobiles or parts manufactured for exportation, changes in quantities or values of imported materials or parts, or of waste incurred, etc. Such supplementary statements and schedules shall be referred to the special agents for verification, and their reports, together with the statements and schedules, submitted to the department for approval prior to liquidation of entries referring thereto.

T. D. 33417 of May 12, 1913, T. D. 33552 of June 14, 1913, and T. D. 34310 of March 27, 1914, are hereby revoked.

Respectfully, ANDREW J. PETERS,
(98408.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Detroit, Mich.*

(T. D. 34954.)

Drawback on bentwood furniture.

T. D. 30975 of October 5, 1910, extended to cover bentwood furniture manufactured by Thonet Bros., of New York, N. Y., with the use of imported parts, in accordance with their sworn statement of November 20, 1914.

TREASURY DEPARTMENT, *December 1, 1914.*

SIR: The department's regulations of October 5, 1910 (T. D. 30975), providing for the payment of drawback on bentwood furniture manufactured by Thonet Bros., of New York, N. Y., with the use of imported parts, in accordance with their sworn statement of June 23, 1910, are hereby extended to cover the bentwood furniture specified in their sworn statement dated November 20, 1914, which is transmitted herewith for filing in your office.

Supplementary sworn schedules covering other styles of bentwood furniture manufactured by the said firm with the use of imported parts may be filed, and, upon verification thereof by the special agents, drawback on the articles described therein may be allowed.

Respectfully, ANDREW J. PETERS,
(70132.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34955.)

Free entry—Drums used in the shipment of acids and chemicals.

Regulations relative to exportation and reimportation of iron or steel drums used for the shipment of acids or other chemicals, free under paragraph 404 of the tariff act of 1913.—T. D. 30404 of March 7, 1910, amended.

TREASURY DEPARTMENT, *November 30, 1914.*

To collectors and other officers of the customs:

T. D. 30404 of March 7, 1910, is hereby amended to read as follows:

The provisions of articles 585 to 587, inclusive, of the Customs Regulations of 1908, relative to the exportation of shooks and staves and their return to this country as boxes or barrels, are hereby extended to the exportation and reimportation of iron and steel drums of foreign manufacture used in the shipment of acids or other chemicals, in accordance with the provisions of paragraph 404 of the tariff act of October 3, 1913.

Upon the exportation of iron and steel drums of foreign manufacture which were used upon importation, or are used upon exportation, as containers of acids or other chemicals, the collector of customs will issue to the American consular officer for the district to which such drums are exported a certificate in the following form:

Certificate of exportation of iron or steel drums.

UNITED STATES CUSTOMS SERVICE,
Port of ——— ———.

This is to certify that there appears on the outward foreign manifest, filed, under sections 4197–4199, Revised Statutes, on the clearance from this port of the S. S. ——— on the ——— day of ———, 191–, to be landed at ———, the following-described iron or steel drums of foreign manufacture used in the shipment of acids or other chemicals.

Marks.	Numbers.	Number of drums.
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

Given under my hand and seal this ——— day of ———, 191–.
[SEAL.]

———,
Deputy Collector.

A foreign shipper desiring to return such drums to this country will be required to make an affidavit substantially in the following form before the American consul at the place of shipment:

I, ——— ———, of ———, do solemnly swear that, to the best of my knowledge and belief, the iron or steel drums mentioned in the annexed invoice are of the manufacture of ——— and were exported from the United States at the port of ———, per S. S. ———, on the ——— day of ———, 191–, and it is my intention to reship the same filled with ——— (name of acid or chemical) to the port of ——— on board the S. S. ——— from the port of ———, which will sail on or about ———; and I further declare that the actual market value of said drums is as stated in the annexed invoice.

Subscribed and sworn to before me this ——— day of ———, 191–.

——— ———.

Upon verifying the statement contained in such affidavit from the records of his office the consul will issue a certificate substantially in the following form and attach the same to the invoice covering the merchandise contained in such drums, if any:

I, ——— ———, consul of the United States at ———, do hereby certify that the facts set forth in the preceding affidavit subscribed by ——— and dated ———, 191–, are, in my opinion, just and true and entitled to full faith and credit.

I further certify that there is on file in this consulate a certificate issued by the collector of customs at the port of ———, reciting the fact that such drums were duly cleared from that port per S. S. ——— on the ——— day of ———, 191–.

In testimony whereof I have hereunto subscribed my name and affixed the seal of my office at ———, this —— day of ———, 191–.

——— ———.

Upon the entry of such drums on their return to this country the importer will be required to file with his entry an affidavit substantially in the following form:

I, ——— ———, do solemnly swear that I am the consignee of the merchandise described in the attached entry and invoice; that the iron and steel drums included in said entry are of the manufacture of ———; that the same have been previously imported into the United States and the duties thereon paid and were exported from the port of ——— per S. S. ——— on or about ———, and the same are now used (or are intended for use) in the shipment of acids or other chemicals.

——— ———.

To facilitate the identification of such drums, the same should be permanently and indelibly marked by means of a plate or a steel die with such marks or numbers, or both, as will be sufficient to identify the same.

The department has held that the following substances constitute "acids or other chemicals" within the meaning of paragraph 404: Liquid carbonic-acid gas, aniline oil, ortho toluidine, nitrobenzol, gasolene, kerosene, lubricating oil, distillates and fuel oil similar to gasolene, wood alcohol, glycerin, palm-kernel or palm-nut oil, coconut oil, peanut oil, soya-bean oil, and Chinese or Japanese wood oil.

The department has also held that foreign-made drums used for the shipment of beer are not entitled upon reimportation to admission free of duty under paragraph 404.

Iron or steel drums of domestic manufacture exported and returned should be entered under the provisions of articles 568 to 577, inclusive, of the Customs Regulations of 1908.

(90716.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 34956.)

Lentils—Dried pease.

Appeal directed from decision of the Board of United States General Appraisers of November 10, 1914, Abstract 36851 (T. D. 34908), involving the classification of certain seed which had been assessed with duty as lentils at the rate of 25 cents per bushel under paragraph 197 of the tariff act of 1909.

TREASURY DEPARTMENT, *December 2, 1914.*

SIR: I am in receipt of your letter of the 24th ultimo, inviting attention to the decision of the Board of United States General Ap-

praisers of November 10, 1914, Abstract 36851 (T. D. 34908), wherein it was held that certain seeds which had been assessed with duty by the collector as lentils at the rate of 25 cents per bushel under paragraph 197 of the tariff act were held by the board to be properly dutiable as dried pease at the rate of 10 cents per bushel under paragraph 209 of the said act.

In view of the importance of the issue and in harmony with your recommendation, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, under subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, ANDREW J. PETERS,
(103148.) *Assistant Secretary.*
ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 34957.)

Common carrier.

Discontinuance of the bonded route of the Western Steam Navigation Co. as a common carrier for the transportation of dutiable merchandise.

TREASURY DEPARTMENT, *December 2, 1914.*

SIR: Referring to your letter of the 23d ultimo, wherein you recommend the discontinuance of the bonded route of the Western Steam Navigation Co., covered by bond of said company approved October 9, 1905 (T. D. 26766), I have to inform you that said bonded route is discontinued upon the condition that all requirements of the regulations have been complied with on the part of said company. You should note the fact and date of discontinuance upon the copy of the bond approved, as above stated, October 9, 1905, now on your files, and retain the same without cancellation to meet any liability which may have accrued thereunder.

Respectfully, ANDREW J. PETERS,
(19572.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Seattle, Wash.*

(T. D. 34958.)

Molded or beaded lumber.

Novelty siding and other lumber, beaded or sided, dutiable at the rate of 15 per cent ad valorem under paragraph 176, tariff act of 1913.

TREASURY DEPARTMENT, *December 4, 1914.*

SIR: The department duly received your letter of the 27th ultimo, inviting attention to the decision of the Board of United States General Appraisers, October 27, 1914, Abstract 36765 (T. D. 34871), reaffirming its decision of July 7, 1914, Abstract 36067 (T. D. 34629),

wherein it was held that beaded lumber was entitled to admission free of duty under paragraph 647 of the tariff act.

In reply to your inquiry whether an appeal has been taken from the board's decision, I have to advise you that an appeal was filed with the United States Court of Customs Appeals on the 17th ultimo for a review of so much of the decision as related to beaded lumber.

No appeal was taken from the decision covering the novelty siding, the subject of the board's decision, as it appears that the said siding was neither molded nor beaded.

Pending a judicial determination of the question whether the lumber enumerated in the department's decision of February 11, 1914 (T. D. 34178), when molded or beaded is subject to duty at the rate of 15 per cent ad valorem as manufactures of wood under paragraph 176 of the tariff act, you are hereby directed to assess duty upon novelty siding or other forms of lumber when molded or beaded under paragraph 176 of the tariff act.

Respectfully, ANDREW J. PETERS,
(97773.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Portland, Me.*

(T. D. 34959.)

Drawback on vacuum cleaners.

T. D. 33661 of July 30, 1913, providing for the payment of drawback on vacuum cleaners manufactured for the account of the Eureka Vacuum Cleaner Co., of of Detroit, Mich., with the use of imported aluminum, revoked.

TREASURY DEPARTMENT, *December 3, 1914.*

SIR: The department's regulations of July 30, 1913 (T. D. 33661), providing for the payment of drawback on vacuum cleaners manufactured for the account of the Eureka Vacuum Cleaner Co., of Detroit, Mich., by the Stecker Electric & Machine Co., of Detroit, Mich., with the use of castings made from imported aluminum by the Detroit Bathtub & Brass Manufacturing Co., are hereby revoked.

Respectfully, ANDREW J. PETERS,
(99465.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Detroit, Mich.*

(T. D. 34960.)

Drawback on artificial silk.

T. D. 26684 of August 30, 1905, extended to cover dyed artificial silk redyed by the William Teschemacher Co., of New York N. Y., for the account of M. L. Eckstein & Co., of New York, N. Y.

TREASURY DEPARTMENT, *December 3, 1914.*

SIR: The department's regulations of August 30, 1905 (T. D. 26684), providing for the allowance of drawback on the exporta-

tion of artificial slik imported in the grey after having been dyed or dyed and spooled for the account of the Chardonnet Artificial Silk Co., of New York, N. Y., are hereby extended to cover imported dyed artificial silk exported after having been redyed by the William Teschemacher Co., of New York, for the account of M. L. Eckstein & Co., of New York, N. Y.

The sworn statements of the William Teschemacher Co., dated November 17, 1914, and M. L. Eckstein & Co., dated November 17, 1914, are transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(30255.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34961.)

Emergency revenue law—Stamp taxes—Informal entries.

Informal entries, Cat. No. 4835, subject to stamp taxes under the act of October 22, 1914, the same as regular entries.

TREASURY DEPARTMENT, *December 5, 1914.*

SIR: Referring to your letter of the 24th ultimo relative to the internal-revenue stamp tax on informal entries, I have to advise you that under a ruling of the Commissioner of Internal Revenue informal entries, Cat. No. 4835, are subject to the stamp taxes under the act of October 22, 1914, the same as regular entries.

Respectfully, ANDREW J. PETERS,
(103103.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Pembina, N. Dak.*

(T. D. 34962.)

Emergency revenue law—Special taxes—Customhouse brokers.

Special-tax liability as customhouse broker when imposed upon a corporation covers all the customhouse brokerage business done by that corporation at one single place of business.

TREASURY DEPARTMENT, *December 7, 1914.*

GENTLEMEN: Referring to your letter of the 16th ultimo relative to the tax on customhouse brokers, I have to advise you that under a ruling of the Commissioner of Internal Revenue the special-tax liability as customhouse broker under the act of October 22, 1914, when imposed upon a corporation covers all the customs brokerage business done by that corporation at one single place of business, and accordingly separate special taxes are not required from the individual officers of the corporation.

Respectfully, ANDREW J. PETERS,
(103103.) *Assistant Secretary.*
Messrs. ——— ———, *Seattle, Wash.*

(T. D. 34963.)

Drawback on dyed silk piece goods.

Drawback on silk piece goods imported in the gray, exported after being dyed for the account of S. Yajima, of New York, N. Y., by Alfred Crew, of Paterson, N. J.

TREASURY DEPARTMENT, *December 7, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on silk piece goods imported in the gray and exported after being dyed for the account of S. Yajima, of New York, N. Y., by Alfred Crew, of Paterson, N. J.

A record shall be kept by S. Yajimi, which will show, in addition to the usual import data, the date on which each lot of imported silk piece goods in the gray is shipped to Alfred Crew for dyeing, the number of pieces of each kind of silk in such lot, the dimensions of each piece, the date of return, and the dimensions of each piece of such goods after being dyed. A record shall be kept by Alfred Crew showing the lot number and date of receipt of each lot of imported silk goods in the gray received from S. Yajima for dyeing, the number of pieces of silk piece goods in such lot, the dimensions of each piece both before and after dyeing, and the date on which the lot is returned to S. Yajima. Sworn abstracts from such records shall be filed with each drawback entry.

The allowance shall not exceed the quantity of imported silk piece goods in the gray used in the manufacture of the dyed silk piece goods exported, as shown by the abstracts from the records prescribed above.

The sworn statements of Alfred Crew and S. Yajima, dated November 18 and 24, 1914, respectively, are transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(103016.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34964.)

Drawback on automobile chassis.

Drawback on imported Mercedes automobile chassis exported after being equipped with starting and lighting systems by the Mercedes Repair Co., of New York, N. Y.

TREASURY DEPARTMENT, *December 7, 1914.*

SIR: Drawback is hereby allowed on imported Mercedes automobile chassis exported after being equipped by the Mercedes Repair

Co., of New York, N. Y., with "Bijur" electric starting and lighting systems in the manner described in their sworn statement of November 24, 1914.

The allowance shall not exceed for each electrically equipped chassis exported one imported Mercedes chassis of the same kind, style, and value.

The sworn statement of the manufacturers, dated November 24, 1914, above referred to, is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(101006–21.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34965.)

Drawback on "Turkey-red oil" or "Sulphonated oil."

Drawback on "Turkey-red oil" or "Sulphonated oil," manufactured by the National Red Oil & Soap Co., of Harrison, N. J., with the use of imported castor oil.

TREASURY DEPARTMENT, *December 7, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on a preparation designated as "Turkey-red oil" or "Sulphonated castor oil," manufactured by the National Red Oil & Soap Co., of Harrison, N. J., with the use of imported castor oil.

A manufacturing record shall be kept, which will show, in addition to the usual import data, the lot number and date of manufacture of each lot of so-called "Turkey-red oil" or "Sulphonated castor oil" manufactured for exportation with benefit of drawback, the quantity of such oil produced and the quantity of castor oil appearing therein. A sworn abstract from such manufacturing record shall be filed with each drawback entry.

The allowance shall not exceed the quantity of imported castor oil appearing in the turkey-red oil or sulphonated castor oil exported, as shown by the sworn abstract from the manufacturing record.

The sworn statement of the manufacturers, dated November 21, 1914, is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(97556.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS. *New York.*

(T. D. 34966.)

Drawback on beaver board.

Drawback on beaver board manufactured by the Beaver Board Co., of Buffalo, N. Y., with the use of imported wood-pulp board.

TREASURY DEPARTMENT, *December 8, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on beaver board manufactured by the Beaver Board Co., of Buffalo, N. Y., with the use of imported wood-pulp board.

A manufacturing record shall be kept, which will show, in addition to the usual import data, the lot number and date of manufacture of each lot of beaver board manufactured for exportation with benefit of drawback, the quantity of beaver board produced, the quantity and value of the imported wood-pulp board used in the manufacture thereof, and the quantity and value of the waste incurred. A sworn abstract from such manufacturing record shall be filed with each drawback entry.

The allowance shall not exceed the quantity of wood-pulp board used in the manufacture of the beaver board exported, as shown by the sworn abstract from the manufacturing record, the allowance to be reduced according to the quantity of the imported material which the value of the waste will replace.

The sworn statement of the manufacturers, dated November 16, 1914, is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(102996.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Buffalo, N. Y.*

(T. D. 34967.)

Dockets for hearings by the Board of General Appraisers.

Dockets for hearing of cases by the Board of United States General Appraisers at ports other than the port of New York for the calendar year 1915.

TREASURY DEPARTMENT, *December 7, 1914.*

To officers of the customs and others concerned:

The appended dockets, prepared by the president of the Board of United States General Appraisers, are published for your information.

(34583.) ANDREW J. PETERS, *Assistant Secretary.*

Dockets for the hearings of cases by the boards of United States general appraisers and individual general appraisers at ports other than the port of New York, 1915.

OFFICE OF BOARD OF UNITED STATES GENERAL APPRAISERS,
641 Washington Street, New York, December 3, 1914.

Under and by virtue of the authority conferred by the customs administrative act of 1890, as amended by the act of August 5, 1909, reenacted in the tariff act of October 3, 1913, and for the purpose of hearing appeals in both classification and reappraisement cases at ports other than the port of New York, the following dockets therefor are hereby promulgated:

Outside ports.	1915									
	Jan.	Feb.	Mar.	Apr.	May.	June.	Sept.	Oct.	Nov.	Dec.
Boston	27		24		26	23	29	27		1
Philadelphia	28		25		27	24	30	28		2
Baltimore	27		24			23		25		1
Newport News		4							29	
Savannah		6							26	
Tampa		9							23	
Atlanta				23				27		
New Orleans				26				29		
Galveston				29					1	
Buffalo				24				1		
Cleveland				26			29			
Detroit				28			27			
Chicago	27		24	29		28	22	26		1
St. Paul						26		30		
Pittsburgh				20				27		
Cincinnati				23				29		
Louisville				26					1	
St. Louis				28					3	
Kansas City					1				6	
Seattle			24			21			24	
Portland, Oreg.			23			18			27	
San Francisco			15			10			30	
Los Angeles			11			3				7
El Paso										13
Honolulu					17					

Whenever it shall appear to the president of the Board of General Appraisers that there are not pending at any port in the schedule herein a sufficient number of cases to warrant the visit of a general appraiser, or for other sufficient cause, he will, after due notice, extend the time appointed for such dockets to a future day.

Whenever a docket day herein fixed falls upon a holiday, such docket will be called upon the day following.

Said dockets and each of them will be called at the hour designated in the notice of hearing of the day appointed in the above schedule, and all pending cases be heard or set for trial as the general appraiser in attendance may direct.

Upon transmittal of records from ports other than New York to the Board of General Appraisers in cases in which local hearings are to be had the sample will, after being properly carded (Form Cat. No. 183 or 184) for identification with such records, be retained in the local office for use at such hearings, and thereafter be immediately indorsed with the board numbers and transmitted with such records to the Board of General Appraisers.

JERRY B. SULLIVAN,
President General Board of United States General Appraisers.

(T. D. 34968—G. A. 7647.)

Lambrequins.

In the absence of proof to show that lambrequins fall within the class of articles commonly known and recognized in trade and commerce as "curtains," lace lambrequins are properly dutiable as lace articles at 60 per cent ad valorem under paragraph 358, tariff act of 1913, and not as curtains.

United States General Appraisers, New York, December 3, 1914.

In the matter of protests 736189, etc., of Max Scheuer & Bros. against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

HOWELL, *General Appraiser:* In his special report in this case the appraiser states that the merchandise consists of "lace lambrequins made on the Nottingham lace curtain or warp machine, composed of cotton yarns, threads, or filaments." These lambrequins were assessed for duty as cotton lace articles at the rate of 60 per cent ad valorem under paragraph 358, tariff act of 1913, and are claimed to be dutiable at 40 per cent ad valorem under the provisions of paragraph 265 as lace window curtains made on the Nottingham lace-curtain machine.

It is admitted in the special report of the appraiser that the lambrequins are made on the Nottingham lace-curtain machine, and therefore, if they are window curtains, they are properly dutiable under paragraph 265, as claimed. No testimony has been offered to prove that lambrequins are within the commercial understanding of the term "curtains" as used in paragraph 265, or tending to show that the term "curtains" has in trade and commerce any different meaning from the common understanding of the term. The lexicographers define *lambrequins* and *curtains* as follows:

Webster's Dictionary:

Lambrequin.— * * * 3. A piece of ornamental drapery or short decorative hanging, pendent from a shelf or from the casing above a window, hiding the curtain fixtures, or the like.

Curtain.—1. A hanging screen intended to darken or conceal, and admitting of being drawn back or up, and reclosed at pleasure; esp., drapery of cloth or lace hanging round a bed or at a window; in theaters, and like places, a movable screen for concealing the stage.

Standard Dictionary:

Lambrequin.—1. Upholstery: A straight or shaped ornamental strip of cloth, leather, or other flexible material hanging from a window or doorway, or the edge of a mantlepiece, as a kind of drapery.

Curtain.—1. A draping or covering, hanging loosely, and readily adjustable, variously employed, as to prevent the passage of light through a window or other opening, to screen a stage from the auditorium, or to hide some object from view; as, an altar *curtain;* a drop *curtain.*

2. Anything that conceals or separates like a curtain.

Century Dictionary:

Lambrequin.—1. A piece of textile fabric, leather, or the like, hanging by one of its edges, and typically having the opposite edge dagged, slitted, scalloped, or otherwise cut in an ornamental manner; used in several ways. * * * (*b*) In upholstery, a sort of curtain covering the upper part of an opening, as a door or window, and often forming a kind of cornice to the curtain proper. (*c*) A short curtain or a piece of drapery suspended for ornament from a mantel shelf or the like.

Curtain.—1. A hanging screen of a textile fabric (or rarely of leather) used to close an opening, as a doorway or an alcove, to shut out the light from a window, and for similar purposes. See *blind, shade, portière, lambrequin;* also *altar-curtain* and *hanging*. Specifically—(*a*) The large sheet of stuff used to inclose and conceal the stage in a theater. It is usually attached to a roller by its loose extremity, and is withdrawn by rolling it up from below. (*b*) Hangings of stuff used at the windows of inhabited rooms; sometimes fixed at top, and capable of being looped up below; sometimes secured at top to rings which run on a rod and therefore capable of being withdrawn toward the sides. * * * (*c*) Hangings used to shut in or screen a bedstead. * * *

2. Whatever covers or conceals like a curtain or hangings. * * *

3. One of the movable pieces of canvas or other material forming a tent.

Oxford Dictionary:

Lambrequin.— * * * 2. U. S. A cornice with a valance of pendent labels or pointed pieces, placed over a door or window; a short curtain or piece of drapery (with the lower edge either scalloped or straight) suspended for ornament from a mantel shelf.

Curtain.—1. A piece of cloth or similar material suspended by the top so as to admit of being withdrawn sideways, and serving as a screen or hanging for purposes of use or ornament; *e. g.*, to inclose a bed (the earliest English use), to separate one part of a room from another, to regulate the admission of light at a window, to prevent draft at a door or other opening, etc.

A careful examination of these definitions leads us to the conclusion that the common meaning of the word *curtains* does not include *lambrequins*.

Counsel for the importers cites the decision of this board in Lesser's case, decided in June, 1896, G. A. 3562 (T. D. 17342), as authority for supporting their contention that these lambrequins are properly dutiable as curtains. We do not, however, consider that decision as controlling here, for it does not appear that the lambrequins in that case were substantially identical with those before us; nor does it appear that the uniform administrative practice has been since that decision to classify as curtains articles like those involved in this case. Ulmann *v.* United States (4 Ct. Cust. Appls., 77; T. D. 33363).

It will be observed that in that case special attention was called to the report of the appraiser, in which he stated that "the goods in question consist of lambrequins made of Nottingham cotton lace, and intended for use as window curtains." The board, however, did not find as a fact that the lambrequins were curtains, although they had been so classified, and the protests, which claimed that they

were not dutiable as curtains, were overruled upon the following finding of fact:

We find as facts that the lambrequins in question are an adjunct of curtains, and used in connection with curtains.

We think it is undoubtedly true that lambrequins are generally, though not always, used in connection with curtains, and when they are so used they may perhaps be said to be an *adjunct* of curtains, but that does not make them curtains. An adjunct of an article is "something joined or added to another thing, but not essentially a part of it."

These lambrequins are not a part of the curtain, but they are used in connection with curtains as "a kind of cornice to the curtain proper." They are nothing more than short decorative hangings which may be suspended for ornament from the casing above a window or from a mantel shelf. They differ from curtains in size and shape, and are not susceptible of being adjusted like curtains to prevent the passage of light through a window or other opening or to screen or hide some object from view.

We are of the opinion that lambrequins do not fall within the provision for window curtains in paragraph 265, and we hold that those here in question are properly dutiable as lace articles, as assessed.

As it has been stipulated between counsel for the importers and counsel for the Government that the steamer in which the merchandise was imported was of British registry, the claim that a discount of 5 per cent on the duties imposed should be allowed under subsection 7 of paragraph J, section 4, tariff act of 1913, is overruled on authority of G. A. 7540 (T. D. 34246).

The protest is overruled, as is also protest 736190, which has been abandoned.

(T. D. 34969.)

Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, Somerville, and Hay.

BEFORE BOARD 1, NOVEMBER 30, 1914.

No. 36957.—TANNING EXTRACT.—Protests 697384, etc., of American Shipping Co. (New York). Opinion by McClelland, G. A.

Tanning extract, reported by the chemist to be an extract of pyrogallol tannin and claimed to be quebracho extract, was held dutiable under the provision for "all ex-

tracts of vegetable origin suitable for dyeing, coloring, staining, or tanning, not containing alcohol and not medicinal, and not specially provided for in this section," in paragraph 22, tariff act of 1909.

No. 36958.—LAVA STONE.—Protest 659748 of T. D. Downing & Co. (New York). Opinion by McClelland, G. A.

Lava stone in the form of towers, pots, and covers, classified under paragraph 114, tariff act of 1909, was held dutiable under paragraph 95, as claimed, on the authority of Downing *v.* United States (5 Ct. Cust. Appls., —; T. D. 34556).

No. 36959.—LEATHER BELT.—Protest 727321 of W. C. Wallace (New York). Opinion by McClelland, G. A.

A leather belt classified under paragraph 360, tariff act of 1913, was claimed entitled to free entry under paragraph 530. Protest overruled.

No. 36960.—ALUM ROLLS.—Protest 735620 of Charles H. Wyman & Co. (St. Louis). Opinion by McClelland, G. A.

Pieces of alum in the form of rolls were held properly classified as a toilet preparation under paragraph 67, tariff act of 1909. Abstract 34653 (T. D. 34165) followed.

No. 36961.—EMBROIDERED LEATHER GLOVES.—Protest 735608 of Pierson-Schade Forwarding Co. (St. Louis). Opinion by McClelland, G. A.

United States *v.* Wertheimer (4 Ct. Cust. Appls., 338; T. D. 33528) followed as to leather gloves with Paris point embroidery.

No. 36962.—PEANUT OIL.—Protest 734508 of Quong Tuck Co. (Seattle). Opinion by McClelland, G. A.

Peanut oil classified under paragraph 45, tariff act of 1913, was claimed entitled to free entry as Chinese nut oil (par. 561). Protest overruled.

No. 36963.—CATGUT.—Protest 732973 of A. G. Spalding & Bros. (New York). Opinion by McClelland, G. A.

Catgut suitable for lacing tennis rackets, classified as a manufacture of catgut under paragraph 366, tariff act of 1913, was held free of duty as catgut, unmanufactured (par. 443). G. A. 7634 (T. D. 34907) followed.

No. 36964.—SPLIT LEATHER.—Protest 686264–43566 of G. W. Sheldon & Co. (Chicago). Opinion by McClelland, G. A.

Merchandise classified as gauffre leather under paragraph 451, tariff act of 1909, was held dutiable as split leather (par. 450) on the authority of Spalding *v.* United States (3 Ct. Cust. Appls., 356; T. D. 32910). Protest overruled, that claim not having been made.

No. 36965.—ENAMEL PAINT.—Protests 710100, etc., of the B. T. Vanderink Co. (Cleveland). Opinion by McClelland, G. A.

On the authority of Abstract 33638 (T. D. 33763) enamel paint was held dutiable under paragraph 55, tariff act of 1909.

No. 36966.—IVORY PIECES.—Protests 712906, etc., of Brunswick, Balke & Collender Co. (New York). Opinion by McClelland, G. A.

Small pieces of ivory used for making billiard cue tips and small billiard balls, classified as manufactures of ivory under paragraph 464, tariff act of 1909, were held dutiable as nonenumerated manufactured articles (par. 480).

No. 36967.—Baskets—Manufactures of Wood.—Protests 723336, etc., of Morimura Bros. (Seattle and New York). Opinion by McClelland, G. A.

Merchandise classified as baskets under paragraph 214, tariff act of 1909, found to be jardinières, umbrella stands, fern pots, vases or lamp mounts, trays, and pedestals, in chief value of wood, were held dutiable under paragraph 215, as claimed.

No. 36968.—Wood Screens.—Protest 742892-47430 of Marshall Field & Co. (Chicago). Opinion by McClelland, G. A.

Screens composed in chief value of wood, stained or painted, were held properly classified under the provisions of paragraph 175, tariff act of 1913, and not dutiable as house or cabinet furniture (par. 176), as claimed. Morimura *v.* United States (2 Ct. Cust. Appls., 181; T. D. 31941) followed.

No. 36969.—Fur Wearing Apparel.—Protest 757407 of F. Lang (New York). Opinion by McClelland, G. A.

Protest overruled as to men's gloves having leather fingers, fur backs, and lined with fur and wool, classified as fur wearing apparel under paragraph 348, tariff act of 1913.

No. 36970.—Bottle Covers and Caps of Palm Leaf.—Protest 760538 of Max Frankel Co. (New York). Opinion by McClelland, G. A.

Bottle covers and caps composed of raffia palm leaf, classified as manufactures of grass or straw under paragraph 368, tariff act of 1913, were held dutiable under the provision for manufactures of palm leaf in the same paragraph.

No. 36971.—Imitation Precious Stones—Goldstone—Aventurine.—Protest 594508 of American Bead Co. (New York).

Sullivan, *General Appraiser:* The merchandise under consideration is invoiced as gold fluss. It was classified as imitation precious stones at 20 per cent ad valorem under paragraph 449 of the tariff act of 1909 and is claimed by the importer to be dutiable under the same paragraph as precious or semiprecious stones at 10 per cent ad valorem, or under paragraph 192 as jewels for use in the manufacture of watches or clocks at the same rate, etc.

The evidence is clear that the merchandise is known as goldstone and is in imitation of aventurine, which is an opaque, yellow, brown, or red quartz, spangled with minute scales of mica or some other mineral, and found principally near Madrid, in Spain. Goldstone is not as hard as aventurine, but that it is an imitation thereof is without dispute.

Examiner Treadwell, who has given the subject of precious and semiprecious stones the study of a lifetime, stated at the hearing that there is no such thing as a genuine goldstone. We quote from his testimony as follows:

Q. Is there a stone known as aventurine?—A. Yes, sir.
Q. Have you seen it?—A. Yes, sir.
Q. How does it differ from the goldstone?—A. It is green.
Q. Does it differ in any other respect as to quality and hardness?—A. Aventurine is a genuine stone and is naturally much harder.

The literature upon the subject declares:

A beautiful imitation of aventurine, called goldstone, is manufactured of glass, into which metal filings are introduced. This goldstone is superior to aventurine in every point except that of hardness. Aventurine and its imitation, but largely the latter, are used for the cheaper kinds of jewelry, and were very popular in the United States some years ago. (Handbook of Precious Stones, by M. D. Rothschild.)

This merchandise was before the board under the act of 1897 (in the matter of protests of Albert Lorsch & Co., G. A. 6089; T. D. 26555), wherein it was held that gold-

stone is an imitation precious stone and was properly dutiable at 20 per cent ad valorem under paragraph 435 of that act.

We have no hesitancy in sustaining the classification of the collector; his action is affirmed, and the protest overruled.

No. 36972.—Imitation Pearl Beads.—Protests 447892, etc., of B. Altman & Co. et al. (New York). Opinion by Sullivan, G. A.

Imitation pearl beads were held properly classified under paragraph 421, tariff act of 1909, on the authority of Lorsch *v.* United States (5 Ct. Cust. Appls.; T. D. 34132).

No. 36973.—Beaded Bags and Purses.—Protests 672728, etc., of M. L. Eckstein & Co. (New York). Opinion by Sullivan, G. A.

Beaded bags and purses composed in chief value of beads were held properly classified under paragraph 421, tariff act of 1909. G. A. 7296 (T. D. 32003) followed. Those composed in chief value of metal were held dutiable under paragraph 199. Abstract 26395 (T. D. 31832) followed. Protests sustained in part.

No. 36974.—Mirrors—Toys.—Protests 675952, etc., of Baltimore & Ohio R. R. Co. (Baltimore). Opinion by Sullivan, G. A.

Mirrors classified under paragraph 109, tariff act of 1909, were claimed dutiable as toys (par. 431). Protests overruled.

Before Board 2, November 30, 1914.

No. 36975.—Cotton Cloth.—Protests 740045, etc., of C. B. Richard & Co. et al. (New York and Detroit). Opinion by Cooper, G. A.

Protests overruled as to cotton cloth classified under the provision for Jacquard figured manufactures of cotton in paragraph 258, tariff act of 1913.

Before Board 1, December 3, 1914.

No. 36976.—Music-Box Disks—Toys.—Protests 621418–41795, etc., of Lyon & Healy (Chicago). Opinion by Sullivan, G. A.

Metal disks, perforated, used in music boxes, classified as parts of musical instruments under paragraph 467, tariff act of 1909, were claimed dutiable as toys (par. 431). Protests sustained as to such disks as are for use in music boxes classified as toys, the Board saying: "Value is not a criterion with reference to a plaything. We wish to be understood as holding clearly to the rule enunciated in Illfelder *v.* United States (1 Ct. Cust. Appls., 109; T. D. 31115); but there is no evidence that would permit us to declare this merchandise as parts of musical instruments, especially as the instrument upon which it is used has been classified and admitted by the Government as a toy."

No. 36977.—Mica Washers for Gramophones.—Protest 603184 of The Victor Talking Machine Co. (New York). Opinion by Sullivan, G. A.

Mica washers for gramophones, cut to size and finished, classified as parts of gramophones under paragraph 468, tariff act of 1909, were claimed dutiable as manufactures of mica (par. 91). Protest overruled on the authority of United States *v.* Lun Chong (3 Ct. Cust. Appls., 468; T. D. 33041).

No. 36978.—Toy Opera Glasses.—Protest 558129 of A. Strauss & Co. (New York). Opinion by Sullivan, G. A.

Opera glasses classified under paragraph 108, tariff act of 1909, were held dutiable as toys (par. 431). Abstract 24799 (T. D. 31300) followed.

No. 36979.—JEWELRY—HATPINS.—Protest 502123 of Kingsbacher Bros (Pittsburgh). Opinion by Sullivan, G. A.

Certain hatpins were held dutiable as jewelry under paragraph 448, tariff act of 1909. Cohn *v.* United States (4 Ct. Cust. Appls., 378; T. D. 33536) followed. Protest overruled, the correct claim not having been made.

No. 36980.—IMITATION JET ARTICLES.—Protest 438716-33897 of Theo. Ascher Co. (Chicago). Opinion by Sullivan, G. A.

United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506) followed as to hatpins with imitation jet tops.

No. 36981.—MANUFACTURES OF PASTE.—Protest 355765 of J. Krusi (New York). Opinion by Sullivan, G. A.

Hatpins composed of metal and paste, classified under paragraph 434, tariff act of 1897, were held dutiable under paragraph 112 or 192, as claimed.

No. 36982.—IMITATION PRECIOUS STONES—BEADS.—Protests 624145, etc., of Bernhard Ulmann & Co. (New York). Opinion by Sullivan, G. A.

Imitation precious stones for use in the manufacture of jewelry were held dutiable under paragraph 449, tariff act of 1909. United States *v.* American Bead Co. (3 Ct. Cust. Appls., 509; T. D. 33166) followed.

No. 36983.—IMITATION PEARL BEADS.—Protests 743709, etc., of The E. A. Bliss Co. et al. (Bridgeport et al.), and protests 707723, etc., of Hensel, Bruckmann & Lorbacher et al. (New York). Opinions by Sullivan, G. A.

On the authority of Lorsch *v.* United States (5 Ct. Cust. Appls., —; T. D. 34132), imitation pearl beads were held properly classified under paragraph 421, tariff act of 1909.

No. 36984.—LACE PINS.—Protest 653195 of B. Altman & Co. and protests 625733, etc., of Strauss Bros. & Co. (New York). Opinions by Sullivan, G. A.

United States *v.* Flory (4 Ct. Cust. Appls., 87; T. D. 33367), and United States *v.* Strauss (4 Id. 386; T. D. 33797) followed as to lace pins.

BEFORE BOARD 2, DECEMBER 3, 1914.

No. 36985.—EMBROIDERED FLOUNCINGS IN PART OF LEVER LACE.—Protests 677231, etc., of the Loeb & Schoenfeld Co. (New York). Opinion by Howell, G. A.

On the authority of Altman *v.* United States (5 Ct. Cust. Appls., —; T. D. 34251), embroidered flouncings in part of Lever lace were held properly classified under paragraph 350, tariff act of 1909.

No. 36986.—BASSINE—VEGETABLE FIBER.—Protest 730012 of F. H. Cone (New York).

Bassine, a vegetable fiber, classified by similitude as istle or Tampico under paragraph 359, tariff act of 1909, was claimed free of duty as vegetable substances (par. 578 or 630). Protest overruled.

COOPER, *General Appraiser:* The merchandise, which is invoiced as "dressed fiber," is described in the testimony of the importer as bassine or Palmyra. It is imported in large bundles. There are two qualities, one 8 and the other 10 inches in length. The importer claims that it is used only for making brooms and brushes, and that as Tampico is used for making brushes, cordage, cloth, and a substitute for curled hair for mattresses the two articles are not similar in material, quality, or use.

The testimony shows that bassine and Tampico are both used for making scrub brushes, and sometimes both fibers are used in the same brush, but that bassine is stiffer than Tampico and can not be used for making the softer grade of brushes. The record shows that Tampico may be used for other purposes, as the importer stated that he sells it for making a certain grade of cloth, a kind of cordage, and a substitute for curled hair used for mattresses. The importer stated that the latter was the principal use of Tampico; but the witness for the Government testified that not more than 12 per cent of the Tampico imported is used for that purpose, and that the principal use is for making brushes, and his testimony seems to be in harmony with the dictionary definitions. In the Century Dictionary Tampico fiber is defined as—

A tough fiber, the piassava or istle, used in place of bristles for brushes.

In the Century Dictionary and Cyclopedia it is defined as—

A coarse fiber used for making brushes and the cheaper grades of cordage.

Another question arises as to whether or not this merchandise is "dressed, dyed, or combed." The witness for the importer testified that it is taken from the palm leaf at a point where the stem can be stripped from the trunk of the tree; that the stem is cut off and the meat is allowed to rot, either through the action of the elements or through the action of steam; after the meat has rotted away the fiber is removed by beating the dried pulp out; and after that it is boiled to loosen the scruff, and it then becomes the fiber in the condition as imported.

The witness for the Government, who handles the same class of fiber, testified that in order to produce the fiber in the condition of that imported it must pass through an additional process of dyeing and combing, and he produced illustrative exhibits from his own stock showing what he termed Palmyra fiber and bassine. He said that Palmyra fiber is the crude fiber, while the bassine is manufactured from Palmyra fiber by dressing and dyeing, and that the bassine which he produced was of the same grade as the bassine covered by the importation in question.

We are of opinion that the importer has failed to prove by a preponderance of evidence that the merchandise imported is crude vegetable fiber, not dressed or manufactured in any manner, or that there is not a similitude of use between the same and Tampico. The merchandise appears to be dyed, and seems to be of the same character as that passed upon by the board in G. A. 5520 (T. D. 24860), and therein held to be a nonenumerated manufactured article. Under the act of 1897, there in question, there was no provision for Tampico when dressed, dyed, or combed, and the question as to the similarity of the fiber to Tampico did not arise; but that decision stands as an authority for the correctness of the collector's classification in this case. In G. A. 7511 (T. D. 33961), involving a similar issue, we said:

There have been a number of decisions under former tariff acts involving the question of vegetable fibers upon which various processes of manufacture or dressing have been bestowed, and it has been held that where the fibers had been advanced by dyeing, hackling, brushing, polishing, or oiling and combing, they were dutiable as nonenumerated manufactured articles. Wilkens *v.* United States (84 Fed., 152); G. A. 1023 (T. D. 12209); G. A. 1252 (T. D. 12568); G. A. 2980 (T. D. 15956); G. A. 4556 (T. D. 21596). But where the fibers had been simply dried, split, and bunched, they were held to be free of duty as crude vegetable substances or unmanufactured and undressed grasses or fibrous vegetable substances. United States *v.* Richard (99 Fed., 262); Brauss *v.* United States (120 Fed., 1017); G. A. 1675 (T. D. 13423); G. A. 5313 (T. D. 24330), and Abstract 7678 (T. D. 26649).

We find that the merchandise in question is dressed, dyed, or combed, and that it is similar to istle or Tampico, and we hold that it is dutiable at 20 per cent ad valorem under paragraph 359.

No. 86987.—ALUMINUM.—Protests 598205, etc., of Amerman & Patterson et al. (New York). Opinion by Fischer, G. A.

Aluminum in sheets, strips, and circles, classified under paragraph 172, tariff act of 1909, was held dutiable as articles of aluminum wholly or partly manufactured

(par. 199) on the authority of Universal Shipping Co. *v.* United States (4 Ct. Cust. Appls., 245; T. D. 33479).

BEFORE BOARD 3, DECEMBER 4, 1914.

No. 36988.—MARRONS, CRUDE.—Protest 704686 of H. Polinsky (Philadelphia).

WAITE, *General Appraiser:* The goods imported in this case are invoiced as 150 sacks of dry chestnuts. They were imported from Genoa, Italy. Duty has been assessed thereon at 1 cent per pound under paragraph 283, tariff act of 1909, which provides for "nuts of all kinds, shelled or unshelled, not specially provided for in this section." The importer claims they should be free of duty under paragraph 635 as "marrons, crude," or under paragraph 630 as "vegetable substances, crude or unmanufactured, not otherwise specially provided for," and lastly at 10 per cent ad valorem under paragraph 480 as an unenumerated unmanufactured article.

It is necessary to decide two questions in this case: First, are these marrons? If so, are they crude?

Testimony on behalf of the importer was given wherein it was shown that the marron is the chestnut raised in southern Europe; this corresponds with the definition given in the dictionaries. The witness further stated that this importation was marrons, and that as imported they were shelled and dried. The sample introduced in evidence shows this importation to be the kernels of the large chestnut, the chestnut known as the marron. The examiner for the Government testified that the reason for classifying these as "nuts not specially provided for" was because they do not seem to be as large as the marrons which have been passed by him. He testified, however, that these were drier than those he had passed as marrons. The testimony on the part of the importers is that before they become dry they are much larger; in each case the testimony was they are two or three times larger. Other distinctions were made between the chestnut and the marron, from all of which we conclude that the commodity here before us is the marron mentioned in paragraph 635.

It will be noted that the term there used is "marrons, crude." Nothing appears to have been done to these nuts except that the shell has been taken off and they have become dry; whether dried artificially or by simply exposing them to the sun, or through ordinary evaporation by being in a dry place, we are unable to determine.

It is not shown in the testimony what these were intended to be used for. It does appear, however, that they are used to make into confectionery, and we think we can take notice that they are used in the culinary department in preparation of dressing for meats. While it may be there is a cruder form or condition of the marron, we think these are in that condition where something must be done to them to prepare them for use for any purpose. The Court of Customs Appeals in Merck *v.* United States (5 Ct. Cust. Appls., —; T. D. 34549), in defining the term "crude" as applied to imported commodities, used the following language:

> The term "crude" is not confined to something which is in a natural or raw state—something which has not been processed or prepared. "Crudeness" is a relative term, and whether an article is crude is to be determined not by the processes which brought it into being, but by the additional processes to which it is submitted after its creation in order to fit it for its chief or only use. Roessler & Hasslacher Chemical Co. *v.* United States (94 Fed., 822); Leber & Meyer *v.* United States (135 Fed., 243); United States *v.* Danker (2 Ct. Cust. Appls., 522; T. D. 32251).

We are of the opinion, therefore, that this commodity is marrons, crude, and free of duty under paragraph 635. That claim in the protest is sustained.

No. 36989.—DRIED PEASE—SEED PEASE.—Protest 707427 of Northrup-King & Co. (Minneapolis). Opinion by Waite, G. A.

Merchandise classified as seed pease under paragraph 262, tariff act of 1909, used as food and as soil fertilizer, were held dutiable under the provision for dried pease in the same paragraph.

No. 36990.—ANTIQUE DESK.—Protest 697253 of Dorothea Nash (San Francisco). Opinion by Waite, G. A.

Protest sustained claiming an oak bureau or writing desk entitled to free entry as an artistic antiquity under paragraph 717, tariff act of 1909.

No. 36991.—PYROMETER TUBES.—Protests 700639, etc., of Eytinge & Co. (Philadelphia). Opinion by Hay, G. A.

White pyrometer tubes classified under paragraph 94, tariff act of 1909, were claimed dutiable under paragraph 95. Protests sustained. Abstract 29504 (T. D. 32760) followed.

(T. D. 34970.)

Shrinkage.

UNITED STATES *v.* VAN INGEN & CO. *et al.* (No. 1327).

SHRINKAGE AS A CHARGE OR EXPENSE—SUBSECTION 18 OF SECTION 28, TARIFF ACT OF 1909.

The importer of these woolens incurred certain costs for their inspection and damping in London and the collector added these costs to the entered value. In this he exceeded his authority. These costs so incurred are not charges and expenses incident to placing the merchandise in condition packed ready for shipment to the United States, as provided for in subsection 18 of section 28, tariff act of 1909.—United States *v.* Spingarn (5 Ct. Cust. Appls. —; T. D. 34002), distinguished.

United States Court of Customs Appeals, November 27, 1914.

APPEAL from Board of United States General Appraisers, Abstract 34066 (T. D. 33872.

[Affirmed.]

Bert Hanson, Assistant Attorney General (*Thomas J. Doherty*, special attorney, of counsel; *Samuel Isenschmid*, assistant attorney, on the brief), for the United States.

Allan R. Brown and *Gerry & Wakefield* for appellees.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

The importers are engaged in the business of importing English and Scotch woolens for men's clothes. They maintain a warehouse in London. Their course of business is to purchase goods at various points in Great Britain. Those in question in this case were purchased at Huddersfield. The goods are shipped to the London office of the importers in bales. The practice prevails by the present importers to send these bales of goods out of their office to concerns called dampers and examiners. These dampers or examiners send their own vans for the goods, and after treatment return them to the warehouse of the importer in the same form in which they were received, except as defects, if any, in the goods are shown, as hereinafter stated. The process pursued by these dampers or inspectors is to unroll the goods, place them over perches, and make a thorough examination to ascertain if there are any defects in the cloth in width, color, or general appearance. If any such are found, the defect is

marked on the edge of the selvage with a string. The unrolling and suspending of these goods over perches having resulted in giving them a rough appearance, they are then dampened and pressed into the form in which they came originally from the manufacturer, and returned to the importer's office. The expense of this treatment amounts to about a penny a yard.

The goods in question were imported and invoiced at the price paid by the importer, and a notation was made of the expense of inspection and damping, which item was deducted from the total by the importer. The local appraiser made an addition to cover the cost of shrinkage, inspection, and damping, and from this decision an appeal to reappraisement was taken, and the general appraiser made an order "entered value sustained." The collector, however, assessed duty, not only upon the value as entered, to wit, the original cost to the importer, but added the item paid for shrinkage, so called, as a cost charge and expense under subsection 18 of section 28 of the tariff act of 1909. The importer filed his protest to this action of the collector, and on hearing the protest was sustained. The Government has brought this appeal, and the question presented is whether the item for treatment of the cloth, as above stated, is subject to assessment by the collector as an item of cost, charge, or expense under subsection 18.

Subsection 18 provides:

> * * * The duty shall be assessed upon the actual market value or wholesale price thereof, at the time of exportation to the United States, in the principal markets of the country from whence exported; that such actual market value shall be held to be the price at which such merchandise is freely offered for sale to all purchasers in said markets, in the usual wholesale quantities, and the price which the manufacturer or owner would have received, and was willing to receive, for such merchandise when sold in the ordinary course of trade in the usual wholesale quantities, including the value of all cartons, cases, crates, boxes, sacks, casks, barrels, hogsheads, bottles, jars, demijohns, carboys, and other containers or coverings, whether holding liquids or solids, and all other costs, charges and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States, * * *.

The question presented naturally divides itself. It is, first, a question whether the item for the service in question is dutiable at all, or whether it is to be treated as a charge kindred to that of a commission paid by the importer for ascertaining the condition and character of the goods as preliminary to the final acceptance of the same; and, secondly, whether if it be dutiable at all it be not a part of the value of the goods at the time of exportation. The section above quoted provides that the value at the time of exportation to the United States in the principal markets of the country from whence exported is to be the controlling value.

The Board of General Appraisers in deciding the case rested its decision upon an opinion previously filed in T. D. 33882, in which it

was held that the charge in question was not a charge to be ascertained by the collector, but if a charge dutiable at all, it was an item which should have been added to the *per se* value of the goods.

The case of United States *v.* Spingarn (5 Ct. Cust. Appls., —; T. D. 34002) is relied upon by the Government as sustaining the power of the collector to proceed by ascertainment to determine the amount of these charges and to impose duty thereon. But we agree with the Board of General Appraisers in the case cited that under subsection 18 it is the duty of the collector to assess duty upon the actual market value or wholesale price at the time of exportation to the United States. The expense in question having been incurred prior to the date at which the market value is to be found by the appraiser, the item, if dutiable, must be deemed to have entered into the cost of the merchandise to the importer, and it is to be presumed that it entered into consideration of the general appraiser in determining its market value. London is shown by the evidence to be the market for such merchandise, and it is further shown that merchandise which has been shrunk and inspected is the subject of sale in the London market. The expression "other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States," must be construed in connection with what precedes it, which relates to the value of cartons, cases, boxes, etc., and it must be held that the charges and expenses spoken of generally were the charges and expenses of the same general kind and character as those specifically enumerated. Those here in question were not of this character. They related to the inspection of the goods, which might have preceded the receipt of them into the warehouse of the importers, and in the case of some importers did precede such receipt. But the charges had nothing whatever to do with the exportation from London to the United States or with putting the merchandise in condition for shipment. They were not charges and expenses *incident* to placing the merchandise in condition packed ready for shipment to the United States. The same treatment would have been necessary had the importer seen fit to sell these goods in the local market or for exportation to other countries than the United States.

The case is of course clearly distinguishable from that of United States *v.* Spingarn, in that there the cost in question was one, strictly speaking, for the purpose of placing the goods in condition ready for shipment.

Reaching the conclusion, as we do, that the Board of General Appraisers was right in holding that in no view was this charge or cost a charge or cost within the meaning of these words used in subsection 18, it becomes unnecessary to discuss the other question as to whether this item would be a dutiable item under any circumstances if included as a part of the actual market value of the goods

at the time of exportation. For there being no authority of the collector to proceed to ascertain these costs, charges, and expenses, the action of the appraiser must be held final as to the value of the merchandise and the collector must be held to have exceeded his authority.

The decision of the board is *affirmed*.

(T. D. 34971.)

Hatpin tops.

NATIONAL HAT PIN CO. *v.* UNITED STATES (No. 1352).

1. PRESUMPTION OF CORRECTNESS OF COLLECTOR'S ACTION.

Upon the coming in of the protest it is the duty of the collector to forward within 30 days the invoice and all the papers and exhibits connected therewith to the board, unless, of course, reliquidation had been considered proper. In this case a memorandum made by the collector subsequent to the lapse of the 30 days can not be deemed the collector's decision. He was without further jurisdiction and such a memorandum does not overcome the presumption of correctness which attaches to the decision already made and entered.

2. CITATION OF FORMER DECISION OF BOARD.

The mere citation to a former decision by the board by the appraiser in his report to the collector is not sufficient to identify the merchandise in the two cases.—United States *v.* Eytinge (4 Ct. Cust. Appls., 266; T. D. 33486).

United States Court of Customs Appeals, November 27, 1914.

APPEAL from Board of United States General Appraisers, Abstract 34521 (T. D. 34090).

[Affirmed.]

Brown & Gerry for appellant.

Bert Hanson, Assistant Attorney General (*Leland N. Wood*, special attorney, of counsel), for the United States.

Before MONTGOMERY SMITH, BARBER, DE VRIES, and MARTIN, Judges.

BARBER, Judge, delivered the opinion of the court:

The record in connection with the files in this case shows the following facts: The entry was made at the port of New York February 17, 1911, and liquidated May 17 of the same year. The protest was received by the collector June 1, 1911, the material part of which is as follows:

Hon. COLLECTOR OF CUSTOMS,
Port of New York.

SIR: Notice of dissatisfaction is hereby given with, and protest is hereby made against, your ascertainment and liquidation of duties and your decision assessing duty at 45 per cent ad valorem or other rate or rates on hatpin heads, settings, or similar merchandise covered by entries below named. The reasons for objection under the tariff act of August 5, 1909, are as follows: Said merchandise is covered by and is dutiable under the last part of paragraph 449 (as imitation precious stones or

otherwise) at only 20 per cent ad valorem, or the first part of paragraph 449 (as pearls, or diamonds, or otherwise) at only 10 per cent ad valorem, or the first part of paragraph 421 (as beads) at only 35 per cent ad valorem, or paragraph 462 (as manufactures wholly or in chief value of amber, or wax, or otherwise) at only 25 per cent ad valorem, or paragraph 464 (as shells or as manufactures wholly or in chief value of mother-of-pearl or shell or otherwise) at only 35 per cent ad valorem, or paragraph 480 at only 10 per cent ad valorem or only 20 per cent ad valorem. * * *

The appraiser's written answer to the protest, dated November 10, 1911, was that "the merchandise consists of hatpin heads of glass, returned as mf. of glass at rate of 45 per cent, paragraph 109, act of August 5, 1909. Note G. A. 7267 (T. D. 31844)."

November 15, 1911, the deputy collector returned to the appraiser his above answer to the protest with the following indorsement thereon:

APPRAISER: Please report whether the merchandise referred to herein is in imitation of precious stones.

On the 7th of December, 1911, the appraiser, who made the original report, returned the document to the collector with the indorsement:

COLLECTOR: The within described merchandise is in imitation of precious stones.

On the 16th of December, 1911, the collector forwarded these papers, including the protest, to the Board of General Appraisers with the following indorsement thereon:

NEW YORK, *December 16, 1911.*

Respectfully referred to the Board of United States General Appraisers for decision.

The assessment of duty protested against was made in accordance with the return of the appraiser on the invoice as stated in his special report herewith, dated 10/11/11.

In view of said report the protest appears partly valid, and this office stands ready to reliquidate accordingly if authorized by your board.

The protest was filed in statutory time.

WM. LOEB, JR., *Collector.*

On the 19th of January, 1914, Board No. 1 of the Board of General Appraisers filed its decision in the case, saying therein, among other things, that the importer had submitted the protest on the appraiser's report, and further saying that—

It will be observed the appraiser's report was that the merchandise consists of hatpin heads composed of glass. The appraiser did not report that the merchandise in this protest was similar to and of the same character and class as that referred to in the authority cited, and no effort was made by the importer to connect the merchandise in question with the merchandise referred to therein, nor did he move the record in G. A. 7267 (T. D. 31844) into the record in the case at bar.

In United States *v.* Lun Chong & Co. (3 Ct. Cust. Appls., 468; T. D. 35401) the court held that unless a previous record is moved into the case on trial it can not be taken for granted that the merchandise is similar, although the collector may in his report so state. It was there said:

It is not contended in this court by counsel for the importer that, standing alone, the mere submission of a case by reference to a former case imports into the present

record the testimony in the former case; but it is said that as the record shows that the collector, in his letters transmitting the protests, reports that the merchandise in the instant case is like that in the case cited, the former case should be held *stare decisis*. This is carrying the rule of *stare decisis* further than the law justifies. When the present issue came on for trial, the presumption that the collector's action was correct obtained. It was incumbent on the importer, therefore, to overcome this presumption. The citation of a former case did not challenge the attention of the Government in the claim that the testimony in that case was to be made the basis of a decision in the present.

It would appear from this holding that the mere citation of an authority does not overcome the presumption of correctness attaching to the action of the collector. That the cited authority may be used for the principle enunciated is correct, but as to the merchandise involved the presumption of similarity does not attach.

The protest is overruled.

From this decision of the board the importer brings his appeal to this court.

It is here contended by the importer that "there is no presumption of correctness attaching to the original action of the collector in the case at bar; or, if there is such a presumption, it is overcome by the collector's report in the case, because he states that the protest is valid and that he is ready to reliquidate the entry." In this connection it is also claimed that the merchandise is shown by the record to be the same as that covered by G. A. 7267, referred to by the appraiser. This claim of identity is founded upon the fact that in that case the board described the merchandise as "imitation sapphires, amethysts, and sardonyx, composed of glass or paste and intended for use as hatpin tops." We note here that the statement of the collector in the case at bar was that the protest was *partly* valid and that he was ready to reliquidate *if authorized* by the board.

It is contended by the Government that the reference to G. A. 7267 by the appraiser is not sufficient to show that the merchandise here is like or is entitled to the same classification as in that case, and, further, that the presumption obtains that the collector's classification is correct, anything contained in the record to the contrary notwithstanding.

In this connection the Government points out that, under articles 1072 and 1073 of the Customs Regulations of 1908, in connection with T. D. 29939, extending the application thereof to proceedings under the tariff act of 1909, the collector of customs not only had the right, but it was his duty, if satisfied that the importer's protest claim was a valid one, to reliquidate in accordance therewith. We understand said articles are in force and applicable to this case. Article 1072 is as follows:

ART. 1072. *Collector's review on protest.*—When an importer has paid all duties due in case of entry for consumption and has duly notified the collector of his dissatisfaction, the collector and the naval officer, if any, shall review his action upon the

entry, and if satisfied that the claim of the importer is a valid one shall reliquidate the entry in accordance therewith in conjunction with the naval officer, and shall send a statement of the facts to the Board of General Appraisers.

The applicable part of article 1073 is as follows:

ART. 1073. *Transmission to Board of General Appraisers.*—Unless the claim set forth in the protest is regarded by the collector, after reviewing his action with regard to the entry, as a valid one, he shall, within 30 days thereafter, transmit the protest, invoice, and all the papers and exhibits connected therewith to the Board of United States General Appraisers at 641 Washington Street, New York. * * *

Upon the coming in of the protest it was the duty of the collector to forward within 30 days the invoice and all the papers and exhibits connected therewith to the Board of General Appraisers, unless he determined that the protest was well founded and proceeded to reliquidate. At the expiration of the 30 days the collector, unless he acceded to the protest, was without further jurisdiction in the matter as to the classification and assessment of the merchandise, and jurisdiction over those issues had attached to the board whether the papers in the case had or had not actually been forwarded to the board. United States *v.* Strauss (5 Ct. Cust. Appls., —; T. D. 34193).

Applying these rules to the facts here, it is clear that on and after July 1, 1911, the collector had no authority or jurisdiction over the questions raised by the protest, because the 30 days had elapsed from the filing of the protest with him and he had not acceded thereto; hence the only duty cast upon him was the administrative duty of forwarding the proper papers to the board. It is true that he did not perform this duty within the time required, but this delinquency on his part could not enlarge his authority. He could not in the interim, although he may have changed his mind respecting the classification of the merchandise or its duty rate, modify the decision he had already made on those questions, jurisdiction to determine the correctness of which was already vested in the board, nor could he by any act of his impeach or affect the presumed correctness of that decision, unless perhaps there was some claim of fraud, with which we are not concerned in this case. For his own information, he might talk with the appraiser about the case or refer it to him for further report after the expiration of the 30 days, but such action or anything resulting therefrom could not operate against the presumed correctness of his *decision* already made. It is the function of the collector to classify the merchandise and determine the rate and amount of duty. It is the function of the appraiser to determine its value, and we have held upon full consideration that when the appraiser has once made his appraisement and returned the same to the collector he is without authority to recall and change the same. United States *v.* Bennett (2 Ct. Cust. Appls., 249; T. D. 31975).

It is analogous at least to hold that the collector having once rendered his judgment upon the questions within his jurisdiction, and the time having elapsed within which he may lawfully revise the same, is likewise without authority then so to do. Nor is this all—the statute does not clothe the appraiser with any duty respecting the classification of the merchandise. His function relates to the ascertainment of its dutiable value, and although the customs regulations (see articles 1514 and 1515) require the appraiser, among other things, to describe the merchandise in such terms as will enable the collector to classify it for duty, yet this is by the express terms of the said regulations for the purpose of *assisting* the collector, and is not conclusive in any way upon his classification nor the correctness thereof. The collector may or may not classify according to the appraiser's description. In the case at bar it can make no difference how the appraiser has described the merchandise in his supplemental report to the collector, because at that time the collector was without jurisdiction to revise the judgment he had already rendered.

Under these circumstances we can not think, as is claimed by the importer, that this supplemental report of the appraiser should be held to deprive the collector's classification and assessment of the presumption of correctness which generally attaches thereto, nor to relieve the importer of the duty of proving that the claim made in his protest as to the proper classification of the merchandise was correct. It is not a case, as claimed by importer, where one of the parties has come into court and confessed judgment. At the most, if it were held to affect his prior decision, the collector's attitude as disclosed by his communication to the board is that the protest appears to be *partly* valid, but just what part is valid the collector does not say. Evidence would seem to be required to show, in view of the various claims made in the protest, just what claim is valid.

Although we are of opinion that the case may be disposed of on the grounds already mentioned, it should perhaps be added that we think the contention of the Government that the mere citation to a former decision of the board by the appraiser in his report to the collector is not sufficient to identify the merchandise in the instant case as being like that involved in the case cited is sound. Especially is this true of such a citation as is involved in this case, which is merely a reference to the cited authority without any statement on the part of the appraiser that the merchandise is identical.

The observations of this court by Martin, Judge, in United States *v.* Eytinge (4 Ct. Cust. Appls., 266; T. D. 33486) are pertinent here. In that case at the hearing before the board a witness was called by the importers who testified that the articles were similar in character to those involved in a former decision of the board. The

importers then introduced a copy of that decision and rested. There as here no samples of the merchandise were submitted. It was there said:

> The importers did not offer the recorded testimony taken in the former case as evidence in the present case. * * * No sample of the merchandise was introduced in evidence nor was any sample retained by the appraiser. * * * The foregoing record certainly proves that the board's decision in the present case consistently follows the board's former decision in a similar case; but the record totally fails to disclose whether or not the former decision itself was sustained by the facts and the law of the case. The finding reported by the appraiser and the assessment made by the collector are presumed to be correct unless rebutted by sufficient evidence to the contrary. In the present record there is no evidence at all which contradicts the finding or the assessment. * * * It therefore becomes apparent that there was a total failure of evidence before the board in support of the protest, and in such case it is the duty of the court to permit the collector's assessment to govern the importation.

In the case at bar the appraiser's report of December 7, if it be conceded to possess evidentiary value, is simply that the merchandise is in imitation of precious stones, while the provision of paragraph 449, for the assessment under which the importer claims in this court, is for such stones "for use in the manufacture of jewelry." As to whether the importations here are for that use the record in the present case is entirely silent, while in the cited case the board found as a matter of fact that the merchandise there was in form adapted for no substantial use other than for jewelry and millinery ornaments and that they were intended for use as hatpin heads. To adopt that finding as applicable to the merchandise here is to indulge the presumption that hatpin heads made of glass are for use in the manufacture of jewelry without any evidence whatever as to the fact. It is said by the importer that hatpins with precious stones have again and again been held to be articles of jewelry, which may be granted, and it has also been held that other hatpins are not jewelry according as the facts may have appeared in each particular case. We find it unnecessary to enter into a discussion of this question or do more than refer to one case where the subject is considered. See United States *v.* Flory (4 Ct. Cust. Appls., 87; T. D. 33367.)

We think the use can not be inferred, but must, unless conceded, be shown.

To avoid any misunderstanding of the scope of this decision, we take occasion to say that it is not intended hereby to impose any limitation upon the proper exercise by the collector of authority conferred upon him under the provisions of subsection 15 of section 28 of the act of 1909.

The judgment of the Board of General Appraisers is *affirmed.*

(T. D. 34972.)

Gloves.

LEHMAN CO. *v.* UNITED STATES (No. 1354).

MEN'S COTTON GLOVES.

The provision of paragraph 328, tariff act of 1909, relating to knitted or woven gloves, is not limited in its application to gloves that are knitted, fashioned, and shaped wholly by a machine. Spielmann & Co. *v.* United States (3 Ct. Cust. Appls., 368; T. D. 32962) is controlling on the facts in this case.

United States Court of Customs Appeals, November 27, 1914.

APPEAL from Board of United States General Appraisers, Abstract 34530 (T. D. 34090).

[Affirmed.]

Jules Chopak, jr. (*William L. Wemple*, of counsel), for appellant.

Bert Hanson, Assistant Attorney General (*Charles E. McNabb*, assistant attorney, of counsel; *Martin T. Baldwin*, special attorney, on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

DE VRIES, Judge, delivered the opinion of the court:

The merchandise the subject of this appeal consists of men's cotton gloves, made of knitted cotton goods, shaped or cut, and sewn together. They were assessed for duty under the provisions of paragraph 328 of the tariff act of 1909, which, in so far as pertinent, reads:

328. Stockings, hose and half-hose, selvedged, fashioned, narrowed, or shaped wholly or in part by knitting machines or frames, or knit by hand, including such as are commercially known as seamless stockings, hose, and half-hose, * * *. Men's and boys' cotton gloves, knitted or woven, valued at not more than six dollars per dozen pairs, fifty cents per dozen pairs and forty per centum ad valorem; valued at more than six dollars per dozen pairs, fifty per centum ad valorem.

The appellant, who was the importer and protestant, claims them properly dutiable either under the provisions of paragraph 324 of said act as wearing apparel of every description composed of cotton or other vegetable fiber, or under the provisions of paragraph 332 as articles made from cotton cloth. The issues presented in this case and the merchandise the subject of consideration are precisely the same as in the case of Spielmann & Co. *v.* United States (3 Ct. Cust. Appls., 368; T. D. 32962). The testimony adduced at this trial and constituting this record does not undertake to establish commercial description. It seems to have been directed principally to the point of endeavoring to establish as a basis for judicial interpretation the absence from trade and commerce of gloves for men woven from cotton or other vegetable fiber.

The contention of the appellant here is, as it was in the case stated, that the provisions of paragraph 328 apply only to those knitted gloves the manufacture of which is completed upon knitting machines; that is to say, which are not only knitted but are fashioned and shaped wholly by a knitting machine or frame. In response to

the contention that there are no such commercial articles as men's woven gloves, nor a glove made of woven cotton cloth or other vegetable fiber, this record shows upon the testimony of the importer's witnesses the presence in trade and commerce of considerable quantities of such articles. They not only exist in the trade and commerce of this country, but have been imported from abroad. They are used by housemaids, by truckmen, and by gate tenders of railroads, as appears by this record.

In Spielmann & Co. *v.* United States, *supra*, this court said:

> The phrase "cotton gloves, knitted or woven," is a broad and comprehensive term. All cotton gloves must be either knitted or woven, and it would seem that the intent of Congress is manifest to include within this one provision all cotton gloves. Such a thing as a woven cotton glove shaped by the process of weaving to fit the hand is unknown, and it is hardly conceivable that the term "knitted" is to be given a more limited signification when applied to gloves falling within its terms than the word "woven" used disjunctively in connection therewith.

An examination of paragraph 328 likewise discloses that when Congress was therein speaking of stockings made upon a knitting machine and wished to include only those which were fashioned and shaped wholly by a knitting machine it used language for that purpose precisely expressive thereof, speaking of them as "stockings, hose, and half-hose, selvedged, fashioned, narrowed, or shaped wholly or in part by knitting machines or frames." In the succeeding part of the paragraph, the part here in question, Congress did not use this limiting language, though speaking of knitted articles. The natural and forceful inference is that Congress did not here intend to include only those knitted gloves which were shaped and fashioned by knitting machines. The use of the word "woven" in connection with the word "knitted" gains additional force by this verbal relationship. Its use with the word "knitted," without the limiting language stated, goes far to evidence that Congress contemplated in this provision all those knitted gloves which could be made like woven gloves, and, therefore, classified the two together and surrounded each word with the same limiting language and no other. The contrary view renders idle and surplusage that language in the earlier provision. Moreover, as is pointed out in the Spielmann case, *supra*, there was a long continued and uniform and general customs practice, departmental and judicial, which gave to the words "knitted" and "knitting" a meaning which includes such merchandise as this as well as that completely fashioned and shaped by knitting machines. We find nothing in this record which would cause us to depart from the decision in the Spielmann case; on the contrary, the testimony herein and the reargument of the points involved confirm us in the correctness of the views expressed in that decision.

Affirmed.

(T. D. 34973.)

Advertising matter.

ROGER & GALLET *v.* UNITED STATES (No. 1373).

1. PUBLICATIONS UNDER PARAGRAPH 517, TARIFF ACT OF 1909.

The term "publications" in paragraph 517, tariff act of 1909, must be held to apply to importations of the same general class or type as those mentioned in the preceding provisions of the paragraph.

2. ADVERTISING MATTER.

To admit purely advertising matter under that paragraph would extend the meaning beyond the fair import of the language employed.—Schieffelin *v.* United States (84 Fed., 880) distinguished.

United States Court of Customs Appeals, November 27, 1914.

APPEAL from Board of United States General Appraisers, Abstract 34934 (T. D. 34219).

[Affirmed.]

B. A. Levett for appellants.

Bert Hanson, Assistant Attorney General (*Henry H. Childers*, special attorney, on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

The merchandise in question consists of a pamphlet issued by the importers describing and advertising their perfumes, toilet water, etc. The articles were assessed for duty at 25 per cent ad valorem under paragraph 416 of the act of 1909, which imposes a duty of 25 per cent on "books of all kinds, bound or unbound, including blank books, slate books, and pamphlets, * * *." The importer claimed free entry under paragraph 517 of the act, which reads as follows:

> * * * All hydrographic charts, and publications issued for their subscribers or exchanges by scientific and literary associations or academies, or publications of individuals for gratuitous private circulation, and public documents issued by foreign Governments.

The board overruled the protests and the importer appeals. Reliance is placed upon the cases of Schieffelin *v.* United States (84 Fed., 880); United States *v.* Badische & Co. (3 Ct. Cust. Appls., 528; T. D. 33170); United States *v.* Gips (4 Ct. Cust. Appls., 458; T. D. 33879).

It will be noted that in each of these cases the publications involved were printed books which contained matter of general information, one as to the uses of cod-liver oil, one as to the method of using dyestuffs, and the third a fund of general information in regard to Holland. In each instance, however, the information conveyed by the book was accompanied by matter which was in the nature of advertising matter and supposed to benefit the publisher.

On the other hand, the court in Matheson *v.* United States (99 Fed., 261) held that samples of cloth goods arranged on cardboards with printed descriptions of the goods around the samples, and the boards folded into book form with short explanations at the beginning, for

gratuitous distribution, were not, in any proper sense, publications of books, maps, charts, etc., but rather exhibitions of samples for advertising purposes.

This case was followed by the board in T. D. 22143, in which the board distinguished the case of Schieffelin *v.* United States, *supra*, by saying that in that case the articles in question were books which, though intended for advertising purposes, contained some matter of scientific research original with the author and were not intended for general distribution, but for private circulation.

We think this case distinguishable from the cases relied upon by the importer in this, that the article in question is not, in the sense in which the term is employed in paragraph 517, a *publication*. The term "publications" should be held to be of the same general class or type as that mentioned in the preceding provisions of the paragraph. All of those mentioned are publications which are intended to convey some information of a general character. It is true that in the cases cited it has been held that such books, which contain matter of general interest, may still fall within the provisions of paragraph 517, other conditions being present, although they contain, in addition to such matter of general interest, advertising matter. We think, however, that to admit purely advertising matter under this paragraph would recognize an extension of its meaning beyond the fair import of the language, and would accord to the term "publications" a meaning not intended, as evinced by the connection in which it is employed.

The decision of the board is *affirmed*.

(T. D. 34974.)

Lubricating oil.

UNITED STATES *v.* SCHROCK & SQUIRES (No. 1374). UNITED STATES *v.* RICHARD & Co. *et al.* (No. 1375).

COMBINATION OF OILS.

As to this merchandise, one of its constituents, petroleum, is an oil, but the other constituent differs physically, chemically, and commercially from the vegetable oil out of which it is made. It has become a sulphonated saponification of the original vegetable oil and a dissolution of petroleum in this does not constitute a combination of oils. It is a nonenumerated manufactured article and was dutiable as such at 20 per cent under paragraph 480, tariff act of 1909.

United States Court of Customs Appeals, November 27, 1914.

APPEAL from Board of United States General Appraisers, Abstract 34756 (T. D. 34186) and Abstract 35155 (T. D. 34307).

[Affirmed.]

Bert Hanson, Assistant Attorney General (*Leland N. Wood*, special attorney, of counsel; *Charles D. Lawrence*, special attorney, on the brief), for the United States.

Comstock & Washburn, for appellees.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MARTIN, Judge, delivered the opinion of the court:

The merchandise in this case was invoiced as "lubricating oil" and was imported under the tariff act of August 5, 1909.

The appraiser reported the article to be a "combination of oils," dutiable as such at the rate of 25 per cent ad valorem under paragraph 3 of the act. This rate of duty was accordingly assessed by the collector.

The importers protested against the assessment, claiming duty upon the merchandise as a nonenumerated manufactured article at the rate of 20 per cent ad valorem under paragraph 480 of the act.

The protest was submitted upon evidence to the Board of General Appraisers and was sustained. From that decision the Government now appeals.

The paragraphs which are thus called into question read as follows:

3. Alkalies, alkaloids, distilled oils, essential oils, expressed oils, rendered oils, and all combinations of the foregoing, and all chemical compounds, mixtures and salts, and all greases, not specially provided for in this section, twenty-five per centum ad valorem; chemical compounds, mixtures and salts containing alcohol or in the preparation of which alcohol is used, and not specially provided for in this section, fifty-five cents per pound, but in no case shall any of the foregoing pay less than twenty-five per centum ad valorem.

480. That there shall be levied, collected, and paid on the importation of all raw or unmanufactured articles, not enumerated or provided for in this section, a duty of ten per centum ad valorem, and on all articles manufactured, in whole or in part, not provided for in this section, a duty of twenty per centum ad valorem.

The first question, therefore, is whether the article at bar is a "combination" of oils within the terms of paragraph 3, *supra*. The testimony upon this subject seems to be free from substantial contradictions; therefore the facts may be stated with confidence.

The article in question is a dark-colored oily liquid which is used only in machine shops. It serves there as a lubricant for metal-cutting tools when operated in lathes to keep them from burning and spoiling the metal upon which they are acting. The liquid is a combination composed of two constituents. The first of these is simple petroleum, which constitutes about 80 per cent of its bulk and about 75 per cent of its value. The other constituent substance is a so-called "transformed" vegetable oil. The testimony does not disclose the identity of the vegetable oil in question, but the process of "transformation" which it undergoes prior to its combination with the petroleum is described with sufficient certainty. According to the testimony the vegetable oil in question is first sulphonated—that is, it is treated with sulphuric acid whereby a chemical change is produced, the hydrogen of the fatty acid being replaced by the radical of the sulphuric acid. The resulting product is then saponified, whereby further changes of form and substance take place This final product, a sulphonated saponification of the original veg-

etable oil, is thereupon mixed with the petroleum in about the proportions above stated. This combination is the article now in question.

A chemical analysis of the present article discloses the presence also of some resin or resin oil, and the testimony does not specifically explain the origin of this. However, it may fairly be inferred that the resinous content existed in the constituent vegetable oil and was released in the process of sulphonation or saponification.

The foregoing facts seem to negative the claim that the present article should be classified as a "combination of oils." One of its constituents, petroleum, is undoubtedly an oil. The other constituent begins its relevant history as an oil, but it loses its character as such before it enters into combination with the petroleum. The substance which actually enters into that combination differs physically, chemically, and commercially from the vegetable oil from which it had its origin, and can no longer be classed as an oil of any kind.

The following extract from the testimony of N. J. Lane, the Government's chemist, supports the foregoing statement:

Q. Doctor, did you determine the character of the merchandise?—A. I did.

Q. What was it?—A. It was a sulphonated saponification of petroleum and other oils.

Q. How were they united or combined?—A. The petroleum is dissolved in a solution of soap made from sulphonated oil.

* * * * * * *

Q. You determined that it was a sulphonated saponification of oil and petroleum; is that right?—A. Yes; that is all.

It seems fair to conclude that "a solution of soap made from sulphonated oil" is not itself an oil, and that the dissolving of petroleum in such a material does not constitute a combination of oils within the purview of paragraph 3 in question.

This conclusion is not in conflict with the decision in the case of Stone *v.* United States (4 Ct. Cust. Appls., 47; T. D. 33266), for the oil involved in that case had not been sulphonated or saponified before its importation, although one of the questions incidentally raised in the case related to its saponifiable content. It need hardly be said that the issue presented in that case had nothing at all in common with the present question.

The present article, therefore, is a nonenumerated manufactured article, and is composed of several materials of which petroleum is the component material of chief value. Under paragraph 639 of the tariff act of 1909 petroleum was placed upon the free list. This fact brings into application the rule enunciated in the following terms by the Supreme Court in the case of Hartranft *v.* Sheppard (125 U. S., 337):

Quilts are nonenumerated manufactured articles composed of two or more materials. Eider down is on the free list. As eider down is the component material of

chief value in the quilts involved in this suit, and that is free, it follows that they are manufactured articles not provided for, and therefore chargeable with the duty of twenty per cent ad valorem under section 2513, rather than thirty-five per cent as a manufacture of cotton, or fifty per cent as a manufacture of which silk is the component material of chief value.

This rule, under the facts above stated, requires the assessment of the present importation at the rate of 20 per cent ad valorem as a nonenumerated manufactured article under the provisions of paragraph 480 of the act. See also Strakosh *v.* United States (1 Ct. Cust. Appls., 360, 361; T. D. 31453).

Merchandise identical in character with the present article was before the board and the court in the following cases, viz, in the Strakosh case, Abstract 21483 (T. D. 29877), where its assessment as "alizarin assistant" under the tariff act of 1897 was held by the board to be erroneous, but where no relief was due the protestants because of the want of a proper protest and record; in the Strakosh case, Abstract 28570 (T. D. 32560), where its assessment as "alizarin assistant" under the tariff act of 1897 was reversed by the board, and it was held to be dutiable as a nonenumerated manufactured article; in the Richard & Co. case, Abstract 31033 (T. D. 33088), where the decision next foregoing was approved and followed under the tariff act of 1909; and in the case of Strakosh *v.* United States (1 Ct. Cust. Appls., 360; T. D. 31453), where an assessment of the article as "alizarin assistant" under the tariff act of 1909 was in question, but was not decided upon the merits because of the fact that no proof appeared in the record in support of the importers' claim that petroleum was the component material of chief value in the article.

It therefore appears that the issues presented in the foregoing cases were not identical with that now before the court, nevertheless the conclusions therein announced were entirely consistent with that reached in the present case.

In accordance with the views above expressed the decision of the board is *affirmed.*

(T. D. 34975.)

Duress.

BATTEN & CO. *v.* UNITED STATES (No. 1378).

1. DURESS.

The importer may, in view of possible subsequent proceedings, register with his entry his claim as to the true valuation, and for the collector to refuse this privilege might be duress. But to constitute duress the proof must show a substantial right had been denied.

2. IBID.

In the case here there is no evidence that the goods are ever sold in the open markets of the country of exportation at less than the price including the com-

mission in controversy, and the requirement that this should be added to make market value was not to deprive the importer of any substantial right. The requirement, accordingly, did not constitute duress.

United States Court of Customs Appeals, November 27, 1914.

APPEAL from Board of United States General Appraisers, Abstract 34856 (T. D. 34201).

[Affirmed.]

Allan R. Brown for appellants.

Bert Hanson, Assistant Attorney General (*Charles E. McNabb*, assistant attorney, of counsel), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, AND MARTIN, Judges.

DE VRIES, Judge, delivered the opinion of the court:

Appellants for many years have been importers of certain woolen, worsted, and other dress goods at the port of New York from Bradford, England. Their appeal here concerns certain alleged commissions claimed to have been paid by the New York firm to so-called brokers in this class of goods in the country of exportation. The evidentiary facts in the case disclose that the goods were purchased from these so-called brokers, but could not be bought from the manufacturers or others. The issue principally argued at the hearing and in the briefs is a claimed duress exercised by the collector requiring the importers to make their entry in a prescribed form. It appears that in the early stages of the controversy the importers through their broker appeared at the customhouse with their entry, noted upon which were the words "add 2½ per cent commission." This entry was rejected by the collector's office and was thrown out into what is known as the entry error box. Thereupon the matter was taken up with the chief clerk of the entry division of the customhouse, who advised the importers through their broker that such entries would not be accepted; that the only entry that would be accepted would be in substance "add 2½ per cent to make market value." Thereupon and thereafter the importers followed the course thus directed by the chief clerk of the entry division at the customhouse. While there may be natural minor differences as to the precise occurrences and language used, there is no question in the mind of the court that the record fairly discloses that the importers in good faith endeavored to inscribe upon their entry the words "add 2½ per cent commission" for the purpose of, as they supposed, saving their rights in future proceedings, and that the said clerk refused to accept such entries and accepted only those written as he directed.

If this were the only controlling issue in the case we would be inclined to hold that, within the previous decisions of this and the Supreme Court of the United States, this action upon the part of the collector constituted duress as to the controlled action of the import-

ers. What constitutes duress upon behalf of public officials has been so thoroughly discussed by this and the Supreme Court that it needs here no extended elaboration.

The facts of this case in the particulars relating to the transactions of the respective parties at the customhouse are almost identical with the facts in Stein *v.* United States (1 Ct. Cust. Appls., 36; T. D. 31007; 1 Ct. Cust. Appls., 478; T. D. 31525). The Supreme Court of the United States in Robertson *v.* Frank Bros. Co. (132 U. S., 17), speaking to the subject of what constitutes duress in such cases upon the part of a public official, said:

> In our judgment the payment of money to an official, as in the present case, to avoid an onerous penalty, though the imposition of that penalty might have been illegal, was sufficient to make the payment an involuntary one. It is true that the thing done under compulsion in this case was the insertion of the additional charges upon the entries and invoice; but that necessarily involved the payment of the increased duties caused thereby, and in effect amounts to the same thing as an involuntary payment.

In an earlier case, Maxwell *v.* Griswold *et al.* (51 U. S., 10 Howard, 241), which also related to controlled actions of an importer in making an entry, took the same position.

This court in Van Ingen & Co. *v.* United States (4 Ct. Cust. Appls., 320; T. D. 33520), epitomized the doctrine of duress in such cases in the following language:

> Had the collector forced the importers to include in their entry admissions which they did not desire to make, or had he refused to receive their entry unless they excluded from it declarations which they deemed it proper to include for their protection in case of dispute as to the duties imposed, some claim of duress might have been made within the reasoning of Stein *v.* United States (1 Ct. Cust. Appls., 36; T. D. 31007), and of Stein *v.* United States (1 Ct. Cust. Appls., 478; T. D. 31525). Such conduct on the part of the collector might amount to an illegal exaction under color of official authority, and as possession of the goods was dependent on compliance, duress might well be asserted.

The language in N. Erlanger, Blumgart & Co. *v.* United States (154 Fed., 949) is in principle here applicable. The court there said:

> The appraisers can not include in their valuation some improper item, such as ocean freights from the foreign country to the United States, and cut off all inquiry as to their action by merely inscribing on the entry a statement that they added the item "to make market value."

So here the collector had no right to so control the action of the importers in making their entry that the importers could not there register their supposed rights in a manner that would enable them to avail themselves thereof in subsequent proceedings. If the importers wished in a reasonable way to record upon their entry the character of an item included thereupon that its nature might more plainly appear, or, particularly, that it might be so noted that they would not thereby be precluded from afterwards showing its true character, or would not thereafter be precluded by the law from

insisting that it was not a dutiable item or not a part of market value, we can not conceive of the validity of any action or regulation which would deny them absolutely this right. It follows that where the collector, however actuated, refuses to the importers that privilege, at least in a reasonable manner as was here attempted, such refusal upon the part of the collector within the decisions quoted would amount to duress. The existence of such duress, however, will not entitle the importer to relief unless it is shown by the record that in the last analysis it deprived him of some substantial right. Such does not here appear to have been the case.

Primarily this record does not satisfactorily make clear that the commission here claimed was a nondutiable one, at least in its entirety. Herein this case differs from the Stein case, *supra*. In that case the board made a finding "that the services rendered by the commissionaire, which were assumed to be paid by the 2½ per cent, were the legitimate services of the commissionaire, and the payment for same was commissions, which were not dutiable." This finding was accepted by the court as true for the purposes of those cases.

The facts as related by Mr. Batten of the importing firm may be delineated by the following excerpts from his testimony:

Q. Are you familiar with the nature of this 2½ per cent commission that was put on these?—A. I am, perfectly.

Q. For what service was that 2½ per cent paid? (Objected to as immaterial and irrelevant; objection overruled; exception.)—A. That we paid to the commission house in Bradford for the execution of our business, order the goods, examine the goods to see that they were right. We had no means of telling whether before we paid the duties and got them in our store whether they were all right, but *we were obliged to buy the goods through the commission houses* and *these commission houses* charged us this commission for that service alone.

Q. They placed the order for the goods for you with the manufacturer?—A. Yes, sir.

Q. After placing the order what do they do?—A. They place it with the manufacturer, get the goods in the gray, then place them with the dyer and finisher, then examine the goods very carefully to see that they are all right, and if they are not right they reject them; and for that they charge us 2½ per cent commission.

* * * * * * *

Q. I understood you to say in the course of your remarks that you were obliged to buy your goods through the commission house. Is that right?—A. That is correct, because *I could not buy direct from the manufacturers*.

Q. There is no choice to you but to buy them in this way through the commission house?—A. No other way I could get my goods.

Q. At the time you bought them through this commission house I suppose you gave them this compensation of 2½ per cent for their trouble and time as you have stated?—A. Yes, sir.

Q. How long has that been true to your knowledge, Mr. Batten?—A. Well, for twenty-odd years and over.

* * * * * * *

(By Judge WAITE.) Q. You say your agents get them in the gray from the manufacturer and then take them to the dyer and he dyes and finishes them and brings them to you in pieces folded up, does he?—A. Yes.

Q. And your agent examines them, throws them over a line and examines them, marks the defects, then rolls them up again and packs them? Does this 2½ per cent pay for the services?—A. No, sir; that is all included in the first cost of the goods to us. There is a 2½ per cent extra commission.

Q. All these things I have mentioned can not be from the manufacturer, because he is a different man than the man that dyes the goods?—A. The man who I buy the goods of has the price of the manufacturer in the gray cloth and also the dyeing price and all other costs, what it cost, the piece of goods made up.

Q. *Is that the man you pay the commission to?*—A. *That is the man.*

Q. That sells them to you?—A. Yes; that is the man.

Q. The same man you pay the commission to is the man from whom you buy the goods?—A. Yes; we did on those.

Q. We are talking about what you paid at that time?—A. Exactly.

Q. You knew the condition at that time?—A. Yes; when I was in business for myself.

(By Mr. ROBERTSON.) Q. *The same person you paid the 2½ per cent to is the person from whom you bought the goods?*—A. *Absolutely.*

(By Mr. STRAUSS). Q. You bought the goods in their finished condition at a fixed price and you paid him the 2½ per cent for the examination in addition?—A. Yes; the price includes all made up ready for shipment.

It is not exactly clear from the record that the commission does not include the service of supervision of the dyeing at least. In this respect the record is unsatisfactory. The goods are taken in hand by the commissionaire in the gray, by him taken to the dyer and there dyed, presumably according to his instructions and specifications and subject to his approval. This suggestion, however, is made more in the nature of a query which could only be satisfied by a more definite exposition of the facts by the record.

It does here appear, however, conclusively that these goods can not be purchased other than of the commissionaires, that they can not be purchased of the manufacturers, that they can not be purchased at a price less than that paid these commissionaires including the commission. This is the only evidence in the record as to the actual market value of these importations in the country of exportation. There is at least no evidence before us showing that the goods are ever sold in the open markets of the country of exportation at less than the price including this commission.

Actual market value is defined by the several provisions of the customs administrative law and the decisions of the Supreme Court of the United States to be "the price at which the merchandise is freely offered for sale to *all purchasers* in the particular markets of the country of exportation in the usual wholesale quantities, the price which the manufacturer or owner would have received, and was willing to receive, for such merchandise when sold in the ordinary course of trade in the usual wholesale quantities." The evidence in this record discloses that the only price at which these goods could be purchased by all comers, the only price at which they were freely

offered for sale in the usual wholesale quantities in the markets of the country of exportation, was and is the price paid by these importers to the commissionaires, including the 2½ per cent commission. It would seem, therefore, conclusively established for the purposes of this case that the claimed 2½ per cent commission was not a nondutiable item of commission but was in fact a part of the actual market value of the goods.

A very similar case as to the facts and the applicable law was that decided by the United States Circuit Court of Appeals, Second Circuit, in United States *v.* Herrman *et al.* (91 Fed., 116). The facts and conclusions of the court are epitomized in the syllabus as follows:

The evidence showed that manufacturers were accustomed to sell in a foreign market to others than commission men at a fixed price, including in the price an item which they called "commission." The item so charged was the discount which the manufacturers were accustomed to allow commission merchants who purchased direct from them. There was evidence that, in buying goods of a concern which was a manufacturer and also a commission house, the price of the goods purchased of them was the same as for those of their own manufacture and for similar goods manufactured by others which they were selling on commission. *Held*, that the customhouse officers, in appraising the goods, should properly include as a part of the actual manufacturing price the entire sum paid by the importers to the commission men or the manufacturers, no part of which was properly chargeable as a commission.

The principle of law invoked, as stated with approval by the court, in support of the claim of the nondutiability of such commissions was as follows:

A commission paid by the importer to his agent for services in procuring, forwarding, or caring for the goods is an item quite independent of the wholesale price of the goods at the market where they were bought. It may, and generally does, constitute an element of the cost of the goods to the importer; and, in exceptional cases, may of the market value. Muser *v.* Magone (155 U. S. 240; 15 Sup. Ct., 77).

It seems in that case, as is really the fact in this, the claim was made for a commission for a man selling his own goods. The commissionaires in that case were allowed by the manufacturers 5 per cent and the board had allowed them 2½ per cent. After discussing the principles of actual market value and wholesale price and nondutiable commissions in a careful and well-studied opinion the court concluded:

It is not a violent presumption that the price actually paid by the importer to those of whom he buys goods in a foreign market, the price which he is willing to pay and freely pays, is the average market price, and not one 5 per cent higher; and if the appraisers, instead of adding to the invoice price 2½ per cent as an item "improperly deducted as commission," had added 5 per cent, they would have been quite justified in doing so by the evidence. The evidence before the Board of General Appraisers impresses us with the conviction that the item of "commissions," so called, is not entitled to cut any figure in the case, except as a trade device to mislead the customs officers and be made the basis of a claim for a reduction from the real wholesale price.

We are of the opinion, therefore, on the facts here, that while in a proper case the actions of the collector might have resulted in a deprivation of the substantial rights or privileges of the importer

and have amounted to remediable duress, in this case, irrespective of whether or not there was duress, the importers have suffered no substantial or other deprivation of rights.

Affirmed.

(T. D. 34976.)

Coverings or containers.

WRIGHT & GRAHAM CO. *v.* UNITED STATES (No. 1417).

PARAGRAPH 627, TARIFF ACT OF 1913.

Reviewing the history of the legislation affecting containers, such as the immediate coverings of tea in this case, and the larger holders or boxes carrying the packages of tea, it is held that the larger containers used in the shipment and transportation of tea put up and imported in packages less than 5 pounds each should be taxed under paragraph 627, tariff act of 1913, but the immediate coverings or wrappers, constituting a part of the packages, are free of duty.

United States Court of Customs Appeals, November 27, 1914.

APPEAL from Board of United States General Appraisers, G. A. 7567 (T. D. 34467).

[Reversed.]

McLaughlin, Russell, Coe & Sprague (*Edmund P. Sharretts* of counsel) for appellant.

Bert Hanson, Assistant Attorney General (*Charles E. McNabb*, assistant attorney, of counsel), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

BARBER, Judge, delivered the opinion of the Court:

Paragraph 627 of the tariff act of October 3, 1913, and which is one of the free list paragraphs of the act, contains the following:

Tea, not specially provided for in this section, and tea plants: *Provided*, That the cans, boxes, or other containers of tea packed in packages of less than five pounds each shall be dutiable at the rate chargeable thereon if imported empty; * * *.

Subject to these provisions, tea in packages of less than 5 pounds, that is, packages containing 1½ to 4 ounces of tea each, were imported. The immediate containers, holders, or coverings of the tea were either sheet lead, cardboard boxes, or boxes with cardboard sides and tin tops and bottoms. So constituted, these packages of tea were packed in larger tin boxes holding more than 5 pounds. These larger tin boxes are substantially made, are capable of being used and are used as containers after the package teas are removed therefrom, and according to the undisputed testimony of one witness are sometimes of more value than the packages of tea contained therein. When package teas are imported in these large tin boxes such boxes are covered with wooden boxes or crates.

The evidence shows that these cardboard or cardboard and tin boxes are of no appreciable value after the tea has been removed therefrom and generally are thrown away. It also tends to show that the lead covering is likewise of no value and if imported separately

would be in the form of sheets because of its physical inability to maintain the shape of a container unless filled. The tea, of course, was admitted free, but duty was assessed upon these immediate containers, holders, or coverings according to the appropriate rates therefor elsewhere provided in the act, and no duty was assessed upon the larger tin boxes in which the packages were imported. This assessment was sustained by the Board of General Appraisers.

The single question here is whether under the provisions of paragraph 627 duty was properly assessed upon these immediate containers, holders, or coverings.

The testimony of record shows that loose tea is imported in various kinds of containers, in quantities of more than 5 pounds, and that package teas seldom contain more than 1 pound of tea in a package and never more than 5 pounds.

Confessedly the language of the paragraph is not free from ambiguity. It provides for duty on some cans, boxes, or other containers of tea, but it is not clear whether such dutiable articles are the immediate containers or coverings of the tea, which with their contents constitute a package of tea, or are the larger cans, boxes, or containers in which such packages are placed prior to shipment and importation.

Prior to the tariff act of 1909, there had been considerable controversy between the Government and importers as to the dutiability of certain articles used as containers, generally of tea, which were often of such stable contsruction and of such ornamentation and value that it gave rise to the claim that, under the recognized rule that free goods meant free containers (tea not being dutiable), articles unusual in form or designed for uses other than in the bona fide transportation of merchandise were obtaining free entry into this country. T. D. 12564, T. D. 29801, T. D. 29369, Abstract 21393 (T. D. 29834).

During the consideration of the subject matter of the proposed tariff bill of 1909, representations were made on behalf of some manufacturers of tin boxes, cans, and containers that they were inadequately protected, and certain specific and ad volorem taxes on such articles were asked for. See Tariff Hearings, 1908–1909 (vol. 8, p. 8030).

The tariff act of August 5, 1909, contained the following paragraph:

195. Cans, boxes, packages, and other containers of all kinds (except such as are hermetically sealed by soldering or otherwise), composed wholly or in chief value of metal lacquered or printed by any process of lithography whatever, if filled or unfilled, and whether their contents be dutiable or free, four cents per pound and thirty-five per centum ad valorem: *Provided*, That none of the foregoing articles shall pay a less rate of duty than fifty-five per centum ad valorem; but no cans, boxes, packages, or containers of any kind, of the capacity of five pounds or under, subject to duty under this paragraph, shall pay less duty than if the same were imported empty; * * *: *Provided further*, That paper, cardboard or pasteboard wrappings or containers that are made and used only for the purpose of holding or containing the article with which

they are filled, and after such use are mere waste material, shall not be dutiable unless their contents are dutiable.

Much litigation arose under this paragraph, which seems to have been the first enactment of its kind, and there ensued rulings of the Treasury Department and many decisions of the Board of General Appraisers construing and applying it. Tea containers seem to have been a favorite subject of this litigation. T. D. 31072, Abstract 24965 (T. D. 31352), and Abstract 31364 (T. D. 33217) may be referred to. Many other decisions upon this much mooted question may be found by a reference to the subject of "tea coverings" in the indexes to the several volumes of the Treasury Decisions covering the period during which this paragraph was in force. These decisions, so far as reported in the Treasury Decisions, do not generally mention the capacity of the various containers under consideration, but indicate that relatively quite valuable containers were admitted to free entry either as usual containers or as being hermetically sealed.

This brings us to the tariff law of 1913, known as the Underwood Act.

The Ways and Means Committee gave hearings on tariff questions before the Underwood bill was introduced in the House and had in mind tariff information obtained by it in preceding years, as far back as prior to the tariff act of 1909. Its attention was also specifically called to litigation touching the subject of tea containers under paragraph 195. Claim was made to the committee that, as that paragraph had been construed and applied, tea merchants of the United States had been discriminated against, in that they could not profitably import loose tea and put up and sell the same in packages of less than 5 pounds in competition with importers of package teas of that weight, because of the greater cost of manufacturing the immediate containers or coverings of such teas in this country and the greater expense of labor in packing the tea therein. In that connection the committee was urged to omit paragraph 195 from the forthcoming bill and to substitute in lieu thereof a paragraph providing for duty upon "cans, boxes, packages, and other containers of imported tea of a capacity of 5 pounds or under, of whatever material composed," or as a paragraph not limited to tea containers the following: "Cans, boxes, packages, and other containers of imported merchandise of a capacity of 5 pounds or under, of whatever material composed."

On behalf, evidently, of certain importers of tea in packages the committee was urged to repeal altogether paragraph 195, and in support of this contention it was said that its operation had been highly discriminatory and unjust; that all the legislation relating to containers of imported merchandise that was fairly required was to be found in subsection 18 of section 28 of the act of 1909, which in passing, it may be noted, is practically identical with sub-

section R of section 3 of the act of 1913. The provisions referred to in these statutes are, in substance, that any unusual article or form of covering or container (whether of free or dutiable merchandise), if designed for use otherwise than in the bona fide transportation of such merchandise, shall be dutiable at the rate to which it would be subjected if separately imported. It was also claimed that to retain or place a duty on containers of food products would necessarily raise the price to the consumer or deprive him of a suitable container in which to keep or preserve the same until used; that such a duty, so far as it related to the immediate containers of package teas, would not benefit the consumer, but would enable the American tea packer to charge more for such teas; and finally that under the provisions of the act of 1909 the domestic can was the cheapest in the American market and controlled it.

Other interests urged the committee to impose a small duty on all imported teas and also "an additional duty of 5 cents per pound on all teas imported into the United States packed in any description of container containing less than 5 pounds." It was represented that a small duty on all imported teas in packages of 5 pounds or under would allow tea packers in America to compete with foreign-packed teas.

As introduced into the House, the Underwood tariff bill contained the following free-entry paragraph:

630. Tea and tea plants: *Provided*, That cans, boxes, or other containers of tea packed in packages of less than 5 pounds each shall be dutiable at the rate chargeable thereon if imported empty. * * *

When this bill came to the Senate some of the considerations hereinbefore mentioned were presented to the Subcommittee on Finance and it was urged that the first line of this paragraph be amended to read, "tea imported direct from the country of origin and tea plants," etc., leaving the remainder of the paragraph unchanged.

The proceedings from which this resumé is made may be found in the report of the Ways and Means Committee to the first session of the Sixty-third Congress, accompanying H. R. 3321, at page II, and pages 1909 *et seq.* of volume 2, and page 6047 of volume 6 of the Hearings on Tariff Schedules before the Ways and Means Committee of the Sixty-second Congress, and at pages 315 *et seq.* of the volume embodying the Report on Tariff Hearings before the Subcommittee on Finance of the Senate to the same Congress.

These proceedings show, what doubtless would be presumed were they not referred to, that Congress and its committees had proper cognizance of the history of the whole subject matter, knew the various reasons for the repeal of paragraph 195 of the act of 1909, and the divergent claims of persons interested in the action to be taken with reference to tea and the containers thereof, whether in

package form or otherwise. No general substitute for paragraph 195 appears in the Underwood Act.

As to the actual purpose or intent of Congress in the enactment of paragraph 627 we know nothing except what the language thereof imports. This is to be construed, however, in the light of the history of the subject of tea containers hereinbefore set forth and what has been outlined as to the congressional proceedings touching the paragraph itself.

As enacted it is susceptible either of the construction claimed by the Government, namely, that the immediate wrappings or containers of less than 5 pounds of tea are dutiable, or of that of the importers, which is that thereunder duty is to be levied only upon the larger containers of *packages* of tea of less than 5 pounds, the immediate containers or coverings of which are free. And it is not entirely clear, considering alone the language of the paragraph, that it might not be understood to impose a duty upon both classes of these containers or coverings, although in view of what has already appeared we do not now consider this construction to be tenable.

As we have said, the immediate containers or coverings involved in this case have a capacity of, or in fact contain, from 1½ to 4 ounces of tea each. They are not expensive, are not especially durable or substantial in their construction, and after the contents have been consumed are of no value as articles of merchandise, although the boxes may have some further use as containers. The larger tin boxes have a capacity of more than 5 pounds, are substantial in construction, durable, have considerable value, and manifestly are capable of being used as containers long after the teas imported therein have ordinarily been consumed.

It must be confessed that at first blush it seems much more probable that Congress would naturally undertake to levy a duty upon the latter rather than the former. This natural probability is strengthened by the fact that apt language to effect the Government's contention was, as already appears, submitted to the Ways and Means Committee and rejected by it. Further support for this view is found in the fact that when legislating with respect to packages somewhat similar to these packages of tea, Congress has, when some special regard was to be had to the immediate coverings thereof, used the word "immediate" when referring thereto. See paragraphs 180, 199, 203, 209, 228, and 229 of the act of 1913.

We think this indicates a congressional recognition of what we are clear is the fact, namely, that in common understanding the word "package" necessarily implies a wrapper, covering, or container of some kind and many times is used to include the same as well as the commodity thereby held or contained. Such expressions as "packages of soap," "packages of candy," and "packages of pencils," are but common illustrations of this fact, and we doubt not "a package

of tea" is equally common and appropriate. Then too, this construction avoids the seeming incongruity of holding that a flat lead sheet is a container. It also assumes that when Congress substituted, so far as teas are concerned, paragraph 627 for paragraph 195 of the act of 1909, in the first line of which the word "packages" was employed in association with cans and boxes as containers, it intended by omitting the word "packages" from 627 to indicate that the provision for "cans, boxes, and other containers" in that paragraph was not intended to include packages in the class of containers there referred to.

For these reasons and after much consideration we conclude that Congress intended to declare in paragraph 627 that the larger containers used in the shipment and transportation of tea put up and imported in packages of less than five pounds each should be taxed and not the immediate coverings, wrappings, or containers which constitute a part of the packages. It is not claimed that the smaller boxes or lead sheets in this case are unusual containers or coverings or designed for use otherwise than in the bona fide transportation of the merchandise.

The Government's claim that it was the intent of Congress to afford some measure of protection to the tea packers of this country is satisfied by this interpretation. The only difference is that we give effect to this intent by a tax upon the larger and more durable, useful, and valuable containers instead of upon those that are small, unsubstantial, and of no commercial value. Congress may well have recognized the soundness of the claim that, at least when free goods are considered, such immediate containers thereof as are before us should be given free entry and the consumers be thereby permitted to obtain without tax thereon a suitable holder or container of the merchandise in which to keep it until used and as an incident to the character of the commodity. Again this construction would seem to result in a greater uniformity of cost in the prices to the consumers of these package teas, because, instead of resulting in varying prices of the packages according to the duty upon the *immediate* containers or wrappings, which then would become the unit of taxation, logically, at least, a duty upon the larger containers would be distributed pro rata upon the packages contained by them, resulting in equality of cost of the package teas in any given container, which would not happen if there were packed in any given container packages whose immediate coverings or wrappers were subjected to different rates of duty.

The conclusion we reach renders it unnecessary to consider or dispose of any other questions raised by the record.

The judgment of the Board of General Appraisers is *reversed* and cause remanded with direction that reliquidation be had in accordance with the views herein expressed.

(T. D. 34977.)

Common carrier.

Discontinuance of the bonded route of the Seattle & International Railway Co. as a common carrier of dutiable merchandise

TREASURY DEPARTMENT, *December 8, 1914.*

SIR: The department has received your letter of the 1st instant, with inclosure, in relation to the proposed discontinuance of the bonded route of the Seattle & International Railway Co. for the transportation of dutiable merchandise, the said route being covered by the bond of the company named, approved June 20, 1899 (T. D. 21290).

As it appears from your letter that there are no outstanding charges against the bond, the discontinuance is authorized. You should note the fact and date of discontinuance upon the copy of the bond on file at Port Townsend, in your district, and retain the same without cancellation to meet any liability which may have accrued thereunder.

Respectfully, ANDREW J. PETERS,
(309.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Seattle, Wash.*

(T. D. 34978.)

Stamp tax—Consolidated entry.

A consumption entry covering merchandise consolidated in one entry under T. D. 33557, article 8, is subject to the stamp taxes under the act of October 22, 1914, as a single entry.

TREASURY DEPARTMENT, *December 8, 1914.*

SIR: Referring to your letter of the 27th ultimo, and confirming the department's telegram of this date, I have to state that under a ruling of the Commissioner of Internal Revenue a consumption entry covering merchandise arriving on the same train at border ports consigned to the same person at the first port of arrival and consolidated in one entry under T. D. 33557, article 8, is subject to the stamp taxes under the act of October 22, 1914, as a single entry.

Respectfully, ANDREW J. PETERS,
(103103.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Buffalo, N. Y.*

(T. D. 34979.)

Stamp tax on bonds or other obligations under act of October 22, 1914.

[Circular No. 38.]

TREASURY DEPARTMENT, *December 9, 1914.*

To bond-approving officers of the Government and others concerned:

Your attention is invited to the provisions of the act of Congress approved October 22, 1914, entitled "An act to increase the internal

revenue, and for other purposes," and particularly to the paragraphs thereof providing for a stamp tax of one-half of 1 cent on each dollar or fractional part thereof on the amount of premium charged on bonds or obligations known as fidelity and surety bonds, where such obligations are executed by any person, association, company, or corporation transacting the business of fidelity and surety insurance, and providing also for a stamp tax of 50 cents on each obligation executed by any person, corporation, or other entity as surety not engaged in the transaction of a fidelity and surety insurance business. Attention is also invited to T. D. 2062 of November 20, 1914, interpreting the above provisions.

To enable the bond-approving officers of the Government to verify, and the Treasury Department to certify to, the correctness of the amount of stamps thus affixed to each obligation, all blank forms of bond, when prepared for execution, shall provide proper blank spaces wherein the parties executing the obligation shall state the rate and amount of premium paid thereon. In all cases the value of the stamps affixed must bear the proper ratio to the amount of premium paid. When provision for such information is not made by the printed blank, a rubber stamp or other convenient method may be used. The following form should be used:

The rate of premium on this bond is $—— per thousand; the total amount of premium charged is $——.

Every such bond or obligation which is not an original instrument, and therefore not taxable, shall be plainly stamped "Duplicate" on the face thereof.

The officials of this department accepting and approving bonds with individual or corporate sureties are charged with the responsibility of determining whether the proper amount of stamps is affixed to all Government bonds before accepting and approving the same.

W. G. McAdoo,
Secretary of the Treasury.

(T. D. 34980.)

Free entry—Articles for institutions.

Regulations governing the free entry of articles for institutions under paragraphs 427, 573, and 611 of the tariff act of October 3, 1913.

Treasury Department, *December 10, 1914.*

To collectors and other officers of the customs:

The following regulations will govern the entry of articles claimed to be free of duty as specially imported for certain institutions described in paragraphs 427, 573, and 611 of the tariff act.

The paragraphs mentioned read as follows:

427. Books, maps, music, engravings, photographs, etchings, lithographic prints and charts, specially imported, not more than two copies in any one invoice, in good faith, for the use and by order of any society or institution incorporated or established solely for religious, philosophical, educational, scientific, or literary purposes, or for the encouragement of the fine arts, or for the use and by order of any college, academy, school, or seminary of learning in the United States, or any State or public library, and not for sale, subject to such regulations as the Secretary of the Treasury shall prescribe.

573. Philosophical and scientific apparatus, utensils, instruments, and preparations, including bottles and boxes containing the same, specially imported in good faith for the use and by order of any society or institution incorporated or established solely for religious, philosophical, educational, scientific, or literary purposes, or for the encouragement of the fine arts, or for the use and by order of any college, academy, school, or seminary of learning in the United States, or any State or public library, and not for sale, and articles solely for experimental purposes, when imported by any society or institution of the character herein described, subject to such regulations as the Secretary of the Treasury shall prescribe.

611. * * * Regalia and gems, where specially imported in good faith for the use and by order of any society incorporated or established solely for religious, philosophical, educational, scientific, or literary purposes, or for the encouragement of the fine arts, or for the use and by order of any college, academy, school, seminary of learning, orphan asylum, or public hospital in the United States, or any State or public library, and not for sale, subject to such regulations as the Secretary of the Treasury shall prescribe; but the term "regalia" as herein used shall be held to embrace only such insignia of rank or office or emblems as may be worn upon the person or borne in the hand during public exercises of the society or institution, and shall not include articles of furniture or fixtures, or of regular wearing apparel, nor personal property of individuals.

(1) By the express provisions of the foregoing paragraphs compliance with such regulations as the Secretary of the Treasury may prescribe is made a condition precedent to the right of free entry thereunder. All applications that compliance with said regulations be waived should be referred to the department for decision.

(2) The importer shall file on entry, in addition to the declaration required by paragraph D of section 3 of the tariff act, an affidavit of an executive officer or other duly authorized representative of the institution for which the articles are intended substantially in the following form:

Affidavit for free entry of articles for colleges, etc.

CUSTOMS COLLECTION DISTRICT No. —,
Port of ——.

STATE OF ——,
County of ——.

I, ——, do solemnly swear that I am —— of the ——, located at ——, in the State of ——, and that the following described articles, viz, —— were ordered on the —— day of ——, 191–, and the same are to be imported for the sole use of the said —— as its permanent property, and not for sale or distribution, and I do further swear, upon information and belief, that none of said articles have been furnished to the said —— in anticipation or in exchange for similar imported articles, and that no articles from any stock on hand will be received in exchange for or in lieu of the articles above mentioned.

——.

Subscribed and sworn to before me this —— day of ——, 191–.

——,
Deputy Collector or Notary Public.

(3) When such articles are imported through a dealer or agent, his affidavit in addition to that of the importer shall be filed in the following form:

Affidavit of dealer or agent for free entry of articles imported for colleges, etc.

CUSTOMS COLLECTION DISTRICT NO. —,
Port of ———.

I, ——— ———, of the firm of ———, of ———, State of ———, do solemnly swear that the articles mentioned in the above affidavit and covered by the annexed entry were specially ordered for and are to be delivered to ———, and that they were imported by ——— in the ——— from ———, which arrived ———, 191–, and are covered by a consular invoice dated ——— and are contained in case ———, and that no similar articles previously imported free of duty are to be received in exchange for or in lieu of said articles, nor are the same to be subsequently returned or exchanged for articles to be hereafter imported.

——— ———.

Sworn to before me this —— day of ———, 191–.

——— ———,
Deputy Collector or Notary Public.

(4) The above-described affidavit must be filed at time of entry. Bonds will not be accepted for the subsequent production of such affidavits. However, when it is impracticable to produce at the time of entry an affidavit from the institution, the importer may deposit estimated duties and file an affidavit showing why the affidavit of the institution for which the importation is made is not produced. Upon the production of such affidavit and the certificate of delivery within six months from the date of entry, the estimated duties will be refunded upon liquidation of the entry.

(5) Within six months after date of entry, and before liquidation thereof free of duty, there shall be filed with the collector of customs a certificate signed by the authorized executive officer of the institution, which certificate shall be in the following form:

Certificate showing delivery of articles for colleges, etc., entered free of duty.

UNITED STATES CUSTOMS SERVICE,
PORT OF ———,
———, *191–*.

I, ——— ———, do hereby certify that I am ——— of the ———, located at ———, in the State of ———, and that the following articles, viz, ———, specially imported by ———, for the sole use of said ———, covered by entry No. ——, dated ———, 191–, on file in the customhouse at ———, were delivered to said ——— at ———, and that the same are intended to be retained as the permanent property of said ———.

——— ———.

Upon failure to file said certificate the entry will be liquidated as dutiable.

(6) In cases where entries covering articles for institutions are liquidated for duty, either by reason of failure to comply with the regulations or by reason of the decision of the collector that the importation is not of a character entitling it to free entry, importers have their remedy by filing protest under paragraph N, section 3, of the act of October 3, 1913. No relief can be granted importers in the absence of a timely written protest.

(7) Collectors of customs may require evidence of the character of the institution for which the articles are imported, with a copy of its charter, and may also require production of the original of any order for such articles given by the institution to an importing agent or dealer.

BOOKS, ETC.

(8) One declaration may be made for books published serially and imported in installments. A list shall be filed with the declaration on entry of the first numbers of the publication, which list shall be signed by the importer immediately below the last-mentioned article in such list. Subsequent numbers may be admitted free upon affidavit of the importer that they are included in the list already filed. (Par. E, sec. 3, act of Oct. 3, 1913.)

(9) Institutions may file with collectors copies of their charters or articles of association, showing that they are entitled to import books, etc., free of duty under the provisions of paragraph 427. The names of such institutions may then be placed upon a "free list" and small importations by mail addressed to such institutions may be passed free of duty without requiring an affidavit for each importation. This will not apply to importations arriving by freight or express nor to importations ordered through dealers. (T. D. 33769.)

(10) For decisions as to what constitutes public libraries see T. D. 22079, T. D. 22585, T. D. 22662, T. D. 26899, Abstract 20697 (T. D. 29565), and 104 Fed., 540.

Branches of public libraries having distinct collections of books and catalogues are held to be separate libraries.

PHILOSOPHICAL AND SCIENTIFIC APPARATUS.

(11) Paragraph 573 does not provide for the free entry of all articles imported for educational purposes, but limits the free entry to such as constitute philosophical and scientific apparatus, utensils, instruments, and preparations.

(12) Attention is invited to that clause of paragraph 573 which provides for the free entry of articles solely for experimental purposes, which articles need not be of a philosophical or scientific character.

(13) The department has held that the following-named institutions are entitled to import free of duty philosophical and scientific apparatus under the provisions of paragraph 573: The Smithsonian Institution, the Naval Observatory, the Coast and Geodetic Survey, the Geological Survey, the Weather Bureau, the National Museum, Army and Navy Medical Museum, Military Academy at West Point, the Artillery School, Public Health Service, National Bureau of Standards, Fish Commission, scientific bureaus of the Department of Agriculture, the Naval Academy at Annapolis, the Bureau of Mines, the Ordnance School of Appliance (War Department), the Hydrographic Office, and the Naval Engineering Station. State boards of

health have also been held to be entitled to the privilege of free entry under said paragraph.

(14) Municipal corporations have been held by the department not to be entitled to import articles free under paragraph 573.

(15) A hospital, even though having incidental educational features, such as the training of nurses and the instruction of medical students, is not an "institution incorporated or established solely for * * * educational * * * purposes," nor a "college, academy, school, or seminary of learning." Massachusetts General Hospital *v.* United States (112 Fed., 670) and T. D. 23693 and T. D. 24726.

REGALIA.

(16) The following articles have been held not to be regalia under the definition contained in paragraph 611: Altar cloths, altar piece or reredos, altar trimmings of cords and tassels, altar vases, altars, antependia, articles too large to carry in a religious procession, articles the personal property of clergymen or priests, even though used in religious processions, baptismal fonts, candelabra (large), carpets, chandeliers, choir stalls, church fixtures, communion rails, confessionals, joss-house fittings, lamps, lecturn, materials not made up, missal stand, pulpits.

The following articles have been held to be regalia: Alms basin, banners, candlesticks, cassocks for choirs, cinctures, communion service, crosses (if carried in hand or worn on person), military uniforms, monstrance, ostensorium, palls (funeral), rosaries, surplices.

(17) T. D. 24536, T. D. 28273, and T. D. 29995 are hereby superseded.

W. G. McAdoo,
Secretary of the Treasury.

(T. D. 34981.)

Drawback on cotton yarns.

T. D. 34176 of February 11, 1914, extended to cover mercerized and dyed cotton yarn, mercerized and bleached cotton yarn, and mercerized, bleached, and dyed cotton yarn, manufactured for the account of Ludwig Littauer, of New York City, by Gerald Cooper, of Providence, R. I., the Home Bleach & Dye Works and the Robert D. Mason Co., of Pawtucket, R. I., from cotton yarn imported in the gray.

Treasury Department, *December 11, 1914.*

Sir: The department's regulations of February 11, 1914 (T. D. 34176), provide for the payment of drawback on mercerized and bleached and mercerized and dyed cotton yarns produced for the account of Ludwig Littauer, of New York City, by Gerald Cooper, of Providence, R. I., and the Wm. Teschemacher Co., of Brooklyn, N. Y., are hereby extended to cover mercerized and dyed cotton yarn, mercerized and bleached cotton yarn, and mercerized, bleached, and dyed

cotton yarn manufactured for the account of Ludwig Littauer by Gerald Cooper, of Providence, R. I., the Home Bleach & Dye Works and the Robert D. Mason Co., of Pawtucket, R. I., from cotton yarn imported in the gray.

The sworn statements of the Robert D. Mason Co., Ludwig Littauer, and the Home Bleach & Dye Works, dated November 28 and 30, and December 4, 1914, respectively, are transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(96382.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34982.)

Countervailing duty on rum imported from Great Britain.

Collectors informed that Great Britain pays no export allowance on rum and that therefore countervailing duty on rum imported from that country should not be collected under T. D. 34466.

TREASURY DEPARTMENT, *December 11, 1914.*

SIR: Referring further to your letter of August 12, 1914, in which you inquired as to the countervailing duty, if any, to be assessed under the regulations in T. D. 34466, of May 25, 1914, on rum imported from Great Britain, I have to state that the Board of Customs and Excise has informed the American consul general at London that there is no allowance whatever payable on the exportation of rum from Great Britain.

Therefore no countervailing duty should be collected under said decision on rum imported from that country.

Respectfully, ANDREW J. PETERS,
(75418.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34983.)

Emergency revenue law—Parcel-post packages.

No stamp tax required on parcel-post packages passed free of duty unless mail entry issued.

TREASURY DEPARTMENT, *December 12, 1914.*

SIR: I have the honor to return herewith a letter addressed to you by the postmaster at Albany, N. Y., under date of the 9th instant, in which that officer requests to be advised whether the 25-cent internal-revenue stamps required by the emergency revenue act

of October 22, 1914, to be affixed to entries of goods, wares, or merchandise imported into this country should be attached to parcel-post packages from foreign countries indorsed by the customs officers, "Passed free of U. S. customs duty."

In reply I have to advise you that such packages which are passed free of duty are not subject to the said emergency revenue tax. In case mail entries are issued, where goods are conditionally free, the stamps should be affixed even though the contents are delivered free of duty.

By direction of the Secretary.

Respectfully, ANDREW J. PETERS,
(103103.) *Assistant Secretary.*

The POSTMASTER GENERAL.

(T. D. 34984.)

Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, Somerville, and Hay.

BEFORE BOARD 1, DECEMBER 7, 1914.

No. 36992.—DRESSED GOATSKINS.—Protest 758017 of Albert Jaulus (New York). Opinion by McClelland, G. A.

Dressed goatskins were held dutiable by similitude under the second provision of paragraph 348, tariff act of 1913, on the authority of G. A. 7569 (T. D. 34493).

No. 36993.—IMITATION PRECIOUS STONES—BEADS.—Protests 610785, etc., of Wm. E. Flory & Co. et al. (New York). Opinion by Sullivan, G. A.

Rhinestones pierced with two holes were held dutiable as beads under paragraph 421; tariff act of 1909. Abstract 35260 (T. D. 34321), and Abstract 36560 (T. D. 34789) followed. Protests sustained in part.

No. 36994.—SALMON—FISH IN TINS.—Protest 714857 of Wm. A. Bird (Buffalo). Opinion by Brown, G. A.

Merchandise classified as fish in tins under paragraph 270, tariff act of 1909, was held dutiable as salmon (par. 273). Ahlbrecht *v.* United States (2 Ct. Cust. Appls., 471; T. D. 32226) followed.

BEFORE BOARD 2, DECEMBER 7, 1914.

No. 36995.—MACHINE PARTS—CASTINGS, ADVANCED.—Protests 728518, etc., of R. F. Lang and protest 727686 of J. Spiero & Co. (New York). Opinions by Fischer, G. A.

Finished parts of brewing machines and cast-iron repair or replace parts of the Victoria printing press, classified as manufactures of metal under paragraph 199, tariff act of 1909, were held dutiable as castings, advanced (par. 147). Lang *v.* United States (5 Ct. Cust. Appls., —; T. D. 34552), followed.

No. 86996.—Night Lights, Paraffin Chief Value—Manufactures of Wax.—Protest 741643 of R. H. Macy & Co. (New York). Opinion by Fischer, G. A.

Night lights composed in chief value of paraffin and in part of metal, classified under paragraph 199, tariff act of 1909, were held dutiable as manufactures of wax (par. 462). United States *v.* Coccaro (4 Ct. Cust. Appls., 506; T. D. 33921) followed.

No. 86997.—Lithographic Post Cards.—Protest 745679 of O. G. Hempstead & Son (Philadelphia). Opinion by Fischer, G. A.

Certain post cards found to be lithographically printed, classified under paragraph 332, tariff act of 1913, were held dutiable under paragraph 325, as claimed.

No. 86998.—Appliquéd Wearing Apparel.—Protest 755082 of J. J. Gavin & Co. (New York). Opinion by Howell, G. A.

Children's dresses, classified as appliquéd under paragraph 358, tariff act of 1913, were held dutiable as cotton wearing apparel (par. 256). United States *v.* Hamburger (5 Ct. Cust. Appls., —; T. D. 34382) followed.

No. 86999.—Embroidered Cotton Wearing Apparel in Part of Lever Lace.—Protests 713969, etc., of Strawbridge & Clothier (Philadelphia). Opinion by Howell, G. A.

Waists, robes, and dresses in part of lever lace, classified under paragraph 350, tariff act of 1909, were claimed dutiable under paragraph 349 or 402. Protests overruled. Altman *v.* United States (5 Ct. Cust. Appls., —; T. D. 34251) followed.

No. 87000.—Huck Toweling.—Protests 733869, etc., of J. E. Wagner et al. (Philadelphia and Chicago). Opinion by Cooper, G. A.

Huck toweling classified as a manufacture of flax under paragraph 284, tariff act of 1913, was claimed dutiable as plain woven fabric (par. 283). Protests overruled. Abstract 35653 (T. D. 34468) followed.

Before Board 1, December 9, 1914.

No. 87001.—Imitation Precious Stones—Beads.—Protests 695603, etc., of American Bead Co. (New York). Opinion by Sullivan, G. A.

Imitation precious stones for use in the manufacture of jewelry were held dutiable under paragraph 449, tariff act of 1909, on the authority of United States *v.* American Bead Co. (3 Ct. Cust. Appls., 509; T. D. 33166). Rhinestones set in a cup of paste or glass pierced with two holes were held dutiable as beads (par. 421). Abstract 35260 (T. D. 34321) followed. Protests sustained in part.

No. 87002.—Imitation Jet Articles.—Protest 303039 of Veit, Son & Co. (New York). Opinion by Sullivan, G. A.

Hat pin tops in imitation of jet, classified as cut glass under paragraph 100, tariff act of 1897, were held dutiable under paragraph 112 or 193. G. A. 6995 (T. D. 30444) followed.

No. 87003.—Watch Jewels.—Protests 673802–43342, etc., of Elgin National Watch Co. et al. (Chicago). Opinion by Sullivan, G. A.

Merchandise classified as reconstructed rubies under paragraph 449, tariff act of 1909, were held dutiable as watch jewels (par. 192). United States *v.* Elgin Watch Co. (5 Ct. Cust. Appls., — ; T. D. 34532) followed.

No. 87004.—THERMOMETERS.—Protest 730694–45720 of International Forwarding Co. (Chicago), and protests 703245, etc., of Eimer & Amend (New York). Opinions by Sullivan, G. A.

Thermometers in chief value of wood were held dutiable under paragraph 215, tariff act of 1909, as claimed. Thermometers in chief value of blown glass were held properly classified under paragraph 98 on the authority of Abstract 36232 (T. D. 34677).

BEFORE BOARD 2, DECEMBER 9, 1914.

No. 87005.—STRAW BRAIDS.—Protest 739298 of the Comey & Johnson Co. (Cleveland). Opinion by Howell, G. A.

Merchandise classified as artificial silk braids under paragraph 319, tariff act of 1913, and found composed in chief value of straw, was held dutiable under paragraph 335, as claimed.

No. 87006.—ARTIFICIAL SILK HATS.—Protest 290373 of J. & H. Rosenberg (New York). Opinion by Howell, G. A.

Untrimmed hats composed of artificial silk were held dutiable by similitude as cotton wearing apparel under paragraph 314, tariff act of 1897, on the authority of Thomass *v.* United States (1 Ct. Cust. Appls., 86; T. D. 31107).

No. 87007.—WEARING APPAREL AND HANDKERCHIEFS IN PART OF LEVER LACE.—Protests 692207–44018, etc., of Carson, Pirie, Scott & Co., and protests 684169–43726, etc., of Marshall Field & Co. (Chicago), and protest 715163 of J. L. Vandiver (Philadelphia). Opinions by Howell, G. A.

Embroidered wearing apparel in part of Lever lace was held properly classified under paragraph 350, tariff act of 1909. Cotton handkerchiefs and corsets in part of Lever lace were held dutiable under paragraph 349. Altman *v.* United States (5 Ct. Cust. Appls., —; T. D. 34251) and Abstract 36417 (T. D. 34756) followed.

No. 87008.—APPLIQUÉD WEARING APPAREL.—Protests 760539, etc., of J. J. Gavin & Co. (New York). Opinion by Howell, G. A.

Children's dresses classified as appliquéd under paragraph 358, tariff act of 1913, were held dutiable as cotton wearing apparel (par. 256). United States *v.* Hamburger (5 Ct. Cust. Appls., —; T. D. 34382) followed.

No. 87009.—ROSARIES.—Protest 756725 of F. Pustet & Co. (New York). Opinion by Howell, G. A.

Rosaries in chief value of metal and bone were held dutiable under paragraphs 167 and 368, respectively, tariff act of 1913.

No. 87010.—COTTON WASTE.—Protest 735082 of True & McClelland (Boston). Opinion by Cooper, G. A.

On the authority of Abstract 35736 (T. D. 34496), merchandise classified as waste not specially provided for under paragraph 284, tariff act of 1913, was held entitled to free entry as "cotton, and cotton waste or flocks" (par. 467).

BEFORE BOARD 3, DECEMBER 9, 1914.

No. 87011.—COVERINGS OF LIQUIDS AND SEMILIQUIDS.—Protests 312209, etc., of McKenzie Bros. (New York). Opinion by Somerville, G. A.

United States *v.* Peabody (3 Ct. Cust. Appls., 130; T. D. 32383) followed as to coverings of liquids and semiliquids.

No. 87012.—American Goods Returned.—Protests 719134, etc., of Western Fuel Co. et al. (San Francisco). Opinion by Somerville, G. A.

Empty cement sacks were held entitled to free entry as American goods returned under paragraph 500, tariff act of 1909.

No. 87013.—American Goods Returned—Regulations.—Protest 724767-4622 of A. Marx & Sons (New Orleans). Opinion by Somerville, G. A.

The regulations not having been complied with, protests overruled claiming old cotton ties classified under paragraph 199, tariff act of 1909, to be free of duty as American goods returned (par. 500). McBride *v.* United States (1 Ct. Cust. Appls., 293; T. D. 31354) followed.

No. 87014.—Five Per Cent Discount.—Protests 764443, etc., of J. A. Conkey & Co. et al. (Boston). Opinion by Somerville, G. A.

G. A. 7540 (T. D. 34246) followed as to 5 per cent discount on goods imported in vessels of British registry. Protests overruled.

Before Board 1, December 11, 1914.

No. 87015.—Imitation Precious Stones—Beads.—Protests 725172-45358, etc., of T. Buettner & Co. et al. and protests 723908-45234, etc., of G. W. Sheldon & Co. et al. (Chicago). Opinions by Sullivan, G. A.

Merchandise classified as beads under paragraph 421, tariff act of 1909, were claimed dutiable as imitation precious stones (par. 449). Protests overruled. Lorsch *v.* United States (5 Ct. Cust. Appls., —; T. D. 34132) followed.

Before Board 2, December 11, 1914.

No. 87016.—Cotton Cloth.—Protest 743188 of Strouse, Adler & Co. (Bridgeport). Opinion by Cooper, G. A.

Protest sustained as to the average size of the yarn in certain bleached cotton cloth classified under paragraph 252, tariff act of 1913.

No. 87017.—Jute Padding.—Protests 733523, etc., of W. P. West & Son (Philadelphia). Opinion by Cooper, G. A.

Jute padding classified under paragraph 279, tariff act of 1913, was held free of duty under the provisions of paragraph 408. Protests sustained in part.

Before Board 3, December 11, 1914.

No. 87018.—Duress.—Protest 740930 of Dingelstedt & Co. (New York). Opinion by Waite, G. A.

Protest overruled claiming duress. Van Ingen *v.* United States (4 Ct. Cust. Appls., 320; T. D. 33520) followed.

No. 87019.—Alabaster Sculptures.—Protest 725809 of Jordan-Marsh Co. (Boston). Opinion by Waite, G. A.

Articles classified as manufactures of alabaster under paragraph 112, tariff act of 1909, were claimed dutiable as sculptures (par. 470). Protest sustained in part.

No. 87020.—Marble Pedestals for Statues—Entireties.—Protest 726050 of Mattoon & Co. (San Francisco). Opinion by Waite, G. A.

Certain marble pedestals designed to be used with statues with which they were imported, classified under paragraph 112, tariff act of 1909, were held dutiable as

entireties under paragraph 470. United States *v.* Haaker (4 Ct. Cust. Appls., 508; T. D. 33935) followed.

No. 37021.—Mill Buttings.—Protests 707174, etc., of F. W. Myers & Co. (Burlington). Opinion by Waite, G. A.

Mill buttings were held entitled to free entry as firewood under paragraph 712, tariff act of 1909. Abstract 35344 (T. D. 34378) followed. United States *v.* Saunders (5 Ct. Cust. Appls., —; T. D. 34136) noted.

No. 37022.—Gutta-Percha Pitch.—Protest 625862 of Geisenheimer Co. (New York). Opinion by Waite, G. A.

Protest overruled as to gutta-percha pitch, reported by the appraiser to have undergone a process of manufacture, classified as a nonenumerated manufactured article under paragraph 480, tariff act of 1909, and claimed entitled to free entry under paragraph 591.

No. 37023.—Brush with Phosphor Bronze Bristles.—Protest 741875 of Castle, Gottheil & Overton (Boston).

Hay, *General Appraiser*: The merchandise in this case is reported by the appraiser as "one patent rotary wire brush, 92 inches in length and with four rows best phosphor bronze bristles 1 inch wide, projecting three-fourths inch, set spirally in wooden stock 4 inches in diameter, with shaft 1½ inches in diameter projecting 12 inches. This brush is used in connection with an apparatus for cleaning the Fourdrinier wire of a paper-making machine." This description of the merchandise is admitted to be correct and the use as given in the testimony corroborates that given by the appraiser. The merchandise was classified under paragraph 336 of the tariff act of 1913 as brushes, and is claimed to be dutiable under paragraph 114 as manufactures of wire not specially provided for, or under paragraph 167 as manufactures of metal not specially provided for.

The phosphor bronze bristles in the above description, as shown by the sample of the merchandise in question, are not bristles within the ordinary meaning of that term, but very fine wire. Otherwise the description corresponds with the sample submitted at the trial.

Brushes of all kinds are provided for in paragraph 336. As pointed out by us in Worthington & Raymond's case, Abstract 36472 (T. D. 34763), the description of brushes given by the leading lexicographers include those made of wire. The material of which this brush is made is wire. One of the chief uses of a brush according to the definitions given by the leading lexicographers is cleaning. This we may say is a matter of common knowledge. The material, therefore, of which this brush is made, and the use to which it is put, both indicate that the classification is correct. The witness for the importer undertook, in describing the use to which the brush was to be put, to distinguish the process by which the brush in question cleaned the Fourdrinier wire of the paper-making machine from that of brushing by pointing out that it punched the dirt out of the meshes of this wire. This in our judgment does not distinguish the article in question from a brush. In cleaning an ordinary wire window screen with a brush it could not be thoroughly cleaned if the fiber of the brush as it rubbed over it did not go in between the meshes, and from the description we think this article operates in a somewhat similar way. Taking into consideration the description of the article, the use and the manner of its use, its design and effect, we think it is a brush within the meaning of that word as used in paragraph 336. It is therefore correctly classified. The protest is overruled.

No. 37024.—Coverings of Liquids and Semiliquids.—Protest 373230 of Meyer & Lange (New York). Opinion by Hay, G. A.

United States *v.* Peabody (3 Ct. Cust. Appls., 130; T. D. 32383) followed as to coverings of liquids and semiliquids.

No. 87025.—Amended Protest—Insulators.—Protest 748223 of Champion Ignition Co. (Detroit). Opinion by Hay, G. A.

Steatite insulators, classified under paragraph 80, tariff act of 1913, were claimed dutiable at 35 per cent under paragraph 79. By a memorandum filed with the papers it was attempted to amend the protest so as to claim at 40 per cent under the latter paragraph. Protest overruled. Abstract 23003 (T. D. 30529) followed.

No. 87026.—Clerical Error.—Protests 746270, etc., of Spiller & Co. (Buffalo). Opinion by Hay, G. A.

Protests claiming clerical error overruled. United States *v.* Swedish Produce Co. (4 Ct. Cust. Appls., 223; T. D. 33437) followed.

No. 87027.—Wire Cloth.—Protest 744912 of Multi Metal Separating & Screen Co. (New York). Opinion by Hay, G. A.

On the authority of United States *v.* McCoy (4 Ct. Cust. Appls., 396; T. D. 33838) protests sustained claiming certain wire cloth dutiable under paragraph 199, tariff act of 1909.

No. 87028.—Leather Moccasins.—Protest 726965 of A. P. Tapley Co. (Portland, Me.). Opinion by Hay, G. A.

Moccasins made of tanned leather sewed with rawhide, classified as nonenumerated manufactured articles under paragraph 385, tariff act of 1913, were held entitled to free entry as shoes made of leather (par. 530).

No. 87029.—Fireworks—Day and Night Shells.—Protest 700587 of Wilfred Schade & Co. (St. Louis). Opinion by Hay, G. A.

Spherical shells made of paper, containing an American flag or some other object, classified as fireworks under paragraph 433, tariff act of 1909, were claimed dutiable as manufactures of paper (par. 420). Protest sustained on the authority of Abstract 33162 (T. D. 33660).

No. 87030.—Scrap Tin—American Goods Returned.—Protest 680460 of Wm. H. Thornley (San Francisco). Opinion by Hay, G. A.

Scrap tin classified as waste under paragraph 479, tariff act of 1909, was claimed dutiable as American goods returned (par. 500). Protest overruled, the regulations not having been complied with.

Decisions on Applications for Rehearings.

No. 87031.—Rehearing Granted—Wood Pulp.—Protests 615041, etc., of F. Bertuch & Co. et al. Abstract 36715 (T. D. 34845). November 23, 1914.

No. 87032.—Rehearing Granted—Lithographic Prints—Seals.—Protests 714367, etc., of Birn Bros. Abstract 36777 (T. D. 34871). November 23, 1914.

No. 87033.—Rehearing Granted—Beaded Trimmings.—Protest 737479 of J. Loewenthal & Co. Abstract 36651 (T. D. 34824). November 23, 1914.

No. 87034.—Rehearing Granted—Jacquards, Figured.—Protest 754432 of Hanks & Montgomery. Abstract 36789 (T. D. 34871). November 23, 1914.

No. 87035.—Rehearing Granted—Wood Pulp.—Protests 615838, etc., of M. Gottesman & Son et al. Abstract 36715 (T. D. 34845). December 2, 1914.

No. 87036.—Rehearing Granted—Joss Sticks.—Protest 721707 of W. A. Brown & Co. December 2, 1914.

No. 87037.—Rehearing Granted—Legality of Reappraisement.—Protests 722539, etc., of F. G. Favaloro. Abstract 36760 (T. D. 34865). December 2, 1914.

(T. D. 34985.)

Knitted wool caps, ornamented.

Children's knitted wool caps ornamented with rosettes on each side composed of silk ribbon dutiable as wearing apparel at the rate of 35 per cent ad valorem under paragraph 291 of the tariff act.

TREASURY DEPARTMENT, *December 15, 1914.*

SIR: The department duly received your letter of the 19th ultimo, transmitting a communication from the appraiser at your port, with copies of certain correspondence attached thereto, in regard to a variance in practice in the classification of children's knitted wool caps ornamented with a rosette of ribbon, similar to the sample submitted by you. It appears that at one port these woolen caps are assessed with duty at the rate of 60 per cent ad valorem under paragraph 358 of the tariff act as appliquéd wearing apparel, whereas similar merchandise imported through your port is assessed with duty as wool wearing apparel at the rate of 35 per cent ad valorem under paragraph 291 of the said act.

An inspection of the sample shows that it bears a rosette on each side, composed of silk ribbon, and that a trimming of wider silk ribbon is attached to the bottom of the cap or hood of the same character as the strings.

Following the reasoning underlying the decision of the United States Court of Customs Appeals in T. D. 34382 in regard to what constitutes appliqué, the department concurs in the opinion expressed by you that the woolen caps under consideration are not properly dutiable as appliquéd wearing apparel, nor is the department of the opinion that these woolen caps are, as suggested, dutiable under paragraph 358 at the rate of 60 per cent ad valorem as articles composed in whole or in part of ornaments. Even if it be conceded that these woolen caps are articles composed wholly or in part of ornaments, the department is of the opinion that the provision in paragraph 291 for wearing apparel composed wholly or in chief value of wool is more specific than that in paragraph 358 for articles composed in whole or in part of ornaments.

Your attention is invited in this connection to the board's decision of June 19, 1903, G. A. 5357 (T. D. 24509), wherein it was held that certain ladies' cotton collars made of small tuckings were more specifically provided for as wearing apparel than as articles made wholly or in part of tuckings under the tariff act of 1897.

Your practice in assessing duty upon children's knitted wool caps of the character under consideration as wool wearing apparel at the rate of 35 per cent ad valorem under paragraph 291 of the tariff act is accordingly approved.

Respectfully, ANDREW J. PETERS,
(101798.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34986.)

Drawback on flavoring extracts.

T. D. 30910 of September 8, 1910, providing for the payment of drawback on flavoring extracts manufactured by the Star Extract Works, of New York, N. Y., revoked

TREASURY DEPARTMENT, *December 15, 1914.*

SIR: The department's regulations of September 8, 1910 (T. D. 30910), providing for the payment of drawback on flavoring extracts manufactured by the Star Extract Works, of New York, N. Y., with the use of imported alcohol are hereby revoked.

Respectfully, ANDREW J. PETERS,
(79658.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34987.)

Drawback on automobile and motor truck springs.

Drawback on automobile and motor truck springs manufactured by the Perfection Spring Co., of Cleveland, Ohio, with the use of imported steel.

TREASURY DEPARTMENT, *December 15, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on automobile and motor truck springs manufactured by the Perfection Spring Co., of Cleveland, Ohio, with the use of imported steel.

A manufacturing record shall be kept in the form described in the sworn statement of the manufacturers, dated September 10, 1914, which will show, in addition to the usual import data, the lot number and date of manufacture of each lot of springs manufactured for exportation with benefit of drawback and the quantity of imported steel appearing therein. A sworn abstract from such manufacturing record covering each lot of such springs exported with benefit of drawback shall be filed in your office. Extracts from such abstracts may be issued for use at other ports.

The allowance shall not exceed the quantity of imported steel appearing in the automobile or motor truck springs exported, as shown by the abstract from the manufacturing record.

The sworn statement of the manufacturers, dated September 10, 1914, is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(102309.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Cleveland, Ohio.*

(T. D. 34988.)

Drawback on motor trucks and parts of motor trucks.

Drawback on motor trucks and parts of motor trucks manufactured by the Standard Motor Truck Co., of Detroit, Mich., in whole or in part of imported materials.

TREASURY DEPARTMENT, *December 16, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on motor trucks and parts of motor trucks manufactured by the Standard Motor Truck Co., of Detroit, Mich., in whole or in part with the use of imported materials and parts and with the use of materials and parts manufactured in the United States in whole or in part from imported materials which are covered by drawback rates now existing or which may be promulgated in the future, in accordance with the sworn statement of the said company dated November 6, 1914, transmitted herewith, and the sworn statements of domestic manufacturers filed in connection with drawback rates covering materials or parts furnished the Standard Motor Truck Co.

The allowance shall not exceed the quantity of imported materials or parts appearing in the motor trucks or parts of motor trucks exported or the quantity of imported materials used in the manufacture thereof, as the case may be, as shown by the sworn statement of the Standard Motor Truck Co. above referred to or provided for by drawback rates separately established covering materials or parts of domestic manufacture supplied the Standard Motor Truck Co., the allowance for waste to be reduced according to the quantity of imported material which the value of such waste will replace.

Supplementary sworn schedules and statements may be filed modifying the original or showing the use of other imported parts, materials and parts, and materials of domestic manufacture which are covered by drawback rates, new models of motor trucks or parts of motor trucks manufactured for exportation with benefit of drawback, changes in quantities of imported materials or parts used, or of wastes incurred, etc. Such supplementary sworn statements and schedules shall be referred to the special agents for verification and the report of the special agent, together with the statements and schedules, submitted to the department for approval prior to liquidation of entries referring thereto.

Respectfully, ANDREW J. PETERS,
(101006-24.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Detroit, Mich.*

(T. D. 34989.)

Appraisement appeals.

Regulations providing for reports to accompany appraisement appeals to be used before the Board of General Appraisers.

TREASURY DEPARTMENT, *December 16, 1914.*

To collectors and other officers of the customs:

The following regulations providing for reports to accompany appraisement appeals, to be used before the Board of General Appraisers, are hereby promulgated:

If either the importer or collector shall appeal to reappraisement, the collector shall at once notify the appraiser at the port of entry. The notice shall contain a statement of the name of the importer, the name of the owner, the kind of merchandise, the entry number, the date of entry, and the name of the importing vessel.

Upon the receipt of the notice from the collector, the appraiser will fill in the heading of the blank appraisement appeal as to the merchandise, importer, entry number, date, vessel, and examiner's name, the blank for the reappraisement number to be filled in by the appraiser at New York.

The appraiser will then have the proper examiner make the statement of reasons for advance and facts to sustain the same on the form provided for that purpose, as set forth herein.

The appraisement appeal report is in the following form:

Treasury Department.
Customs Cat. No. 6449.
C. F. C. Dec. 17, 1914.

UNITED STATES CUSTOMS SERVICE,
COLLECTION DISTRICT No. —,
Port of ———.

Appraisement appeal reports.

Reappraisement No..... Entry No..... Date....
[To be filled in by the appraiser at New York.]
Merchandise..... Vessel.....
Importer..... Examiner.....
Owner.....

STATEMENT OF APPRAISING EXAMINER, WITH REASONS FOR ADVANCE AND FACTS TO SUSTAIN THE SAME.

(1) Is your appraisal based upon (*a*) actual market value, (*b*) cost of production or (*c*) American selling price?

(2) What evidence have you of sales or offers to sell in the country of exportation in usual wholesale quantities at or about the same date of shipment as the merchandise under reappraisement? (Answer fully, describing the source of your information and giving place and date of sale or offer to sell, names of seller and purchaser, date of shipment, description of merchandise, quantity, price, and terms.)

(3) If you have received invoices to other importers of the same or similar merchandise, furnish the following details: Name of purchaser, name of seller, place of sale, date of shipment, description of merchandise, quantity, price, and terms.

(4) If the merchandise received by other importers is not the same but is similar to the merchandise under reappraisement, state your method of comparison.

(5) If you have submitted the merchandise under reappraisement to the trade for valuation, attach report of each trade witness to this report.

I attach the following: ———.

(6) If your appraisal was based upon the cost of production, describe fully the source of your information and give in detail your calculation showing how you ascertained each item entering into the value found by you.

(7) If your appraisal was based upon the American selling price, describe fully the source of your information and give in detail your calculation showing how you ascertained each item entering into the value found by you.

(8) If your appraisal was based upon the consular notation or a special agent's or special commissioner's report, attach the original of the report to this report; or, if that be not practicable, attach a certified copy of the report.

I attach the following: ———.

(9) If your appraisal was made following a former reappraisement, give the following information:

Reappraisement No. ——.	Exporter, ———.
Importer, ———.	Manufacturer, ———.

(10) If your appraisal was made in accordance with a private invoice in your possession, attach it to this report and state from whom it was obtained.

I attach the following: ———.

(11) Give any other facts which, in your opinion, will tend to sustain your appraisal.

(12) Do you desire a reappraisement hearing at the port of entry?

(13) Do you desire to have samples of the merchandise submitted to the trade for testimony? If so, state herein the names and addresses of the witnesses.

Witnesses:	Addresses:
——— ———.	——— ———.
——— ———.	——— ———.

(14) Do you desire witnesses to give testimony at a reappraisement hearing? If so, give the names and addresses of witnesses and indicate whether it will be necessary to subpœna them.

Witnesses:	Addresses:
——— ———.	——— ———.
——— ———.	——— ———.

(15) Attach to this report all documentary evidence in your possession.

I attach the following: ———.

(Signed) ——— ———,
Appraising Examiner.

STATEMENT OF NEW YORK EXAMINER WHEN THE ENTRY IS NOT MADE AT NEW YORK.

(1) Answer question No. 2 of appraising examiner's report.

(2) Answer question No. 3 of appraising examiner's report.

(3) If you have any information of the matters referred to in questions Nos. 4, 6, 7, 8, 11, 13, and 14 of appraising examiner's report give same in the manner indicated in those questions.

(4) Attach all documentary evidence in your possession to this report.

I attach the following: ———.

(Signed) ——— ———,
New York Examiner.

In cases where the appraiser deems it necessary to have a record of the values placed on merchandise, or the statements made in regard thereto by trade witnesses whom he may interview before or after making an advance, the "witness blank" (Customs Cat. No. 6451) will be used. The blank, which is in the following form, should be attached to the appraisement appeal report:

Witness blank.

Treasury Department,
Customs Cat. No. 6451.
C. F. C. Dec. 17, 1914.

UNITED STATES CUSTOMS SERVICE,
COLLECTION DISTRICT No. ——,
OFFICE OF THE APPRAISER OF MERCHANDISE,
Port of ——, *191–.*

Witness..... From.....
Merchandise..... Entry No.*.....
Exported by..... Date of exportation.....

I, —— ——, hereby certify that I am familiar with the foreign market value of the merchandise described below and represented by the samples submitted in that † —— and the prices noted below represent my estimate of the foreign wholesale market value thereof on the date of exportation in the usual wholesale quantities. I attach hereto a sample of the merchandise purchased by me in ——, for which I paid the price marked on the sample.

(Signed) —— ——.

Quality or pattern No.	Description.	Value.		Statement as to knowledge of merchandise. ‡
		Currency per.	D'cts.	

‡ Here note whether you have purchased or taken on consignment the same or similar merchandise, and if similar merchandise, describe the merchandise and what was the date of your purchase and date of shipment.

——, being duly sworn, according to law, deposes and says that the above statement is true.

(Signed) —— ——.

Sworn to before me this —— day of ——, 191–.

——, *Appraiser.*

The reports must be completed not later than four days after the notice has been received by the appraiser. They should be forwarded to the appraiser at New York, addressed to "United States Appraiser, 641 Washington Street, New York, N. Y. (Law Division)."

Upon receipt of the report by the appraiser at New York he shall cause the proper examiner to fill out under the heading "Statement of New York examiner" (Customs Cat. No. 6449), the said examiner to make any statement he may have touching on the market value

* To be filled in by examiner after return of paper from the person making the statement.
† Insert a statement showing sources of knowledge.

of the merchandise in question on the form provided for that purpose as set forth herein.

The appraiser at New York will then cause the complete report, together with such documentary evidence as may be attached thereto, to be forwarded to the office of the United States Assistant Attorney General, in charge of customs, 641 Washington Street, New York, N. Y., within 48 hours of the time he receives it.

(94120.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 34990.)

Lead wastage—Bonded smelters.

The collector of customs at Chicago, Ill., authorized to make an allowance of .5458 per cent for lead wastage incurred in the refining of foreign lead bullion at the National plant of the American Smelting & Refining Co., South Chicago, Ill., such allowance to be effective as of July 1, 1914.

TREASURY DEPARTMENT, *December 17, 1914.*

SIR: Under subsection 1, paragraph N, section 4, of the tariff act of October 3, 1913, it is provided that the works of manufacturers engaged in smelting or refining, or both, of ores or crude metals may, upon the giving of satisfactory bonds, be designated as bonded smelting warehouses, and that imported ores or crude metals may be there smelted or refined, or both, without the payment of duties, together with other ores or crude metals of home or foreign production, and that the several charges against such bonds may be canceled upon the exportation or delivery to a bonded manufacturing warehouse of an amount of the same kind of metal equal to the actual amount of dutiable metal producible from the smelting or refining, or both, of such ores or crude metals, as determined from time to time by the Secretary of the Treasury.

The sworn statement of the American Smelting & Refining Co., submitted in accordance with the provisions of T. D. 33213, covering operations at the National plant at South Chicago, shows that during the period from July 1, 1913, to June 30, 1914, there was incurred at that plant a refining loss on foreign lead bullion of .5458 per cent.

You are accordingly hereby authorized to make an allowance of 0.5458 per cent for the wastage incurred in the refining of foreign lead bullion, and to give appropriate credits therefor on the bonds of the said company covering such importations.

This wastage allowance will be effective as of July 1, 1914, and shall be applied to all withdrawals from bond on and after that date.

No wastage shall, however, be allowed on withdrawals for consumption.

Respectfully, ANDREW J. PETERS,
(67732.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Chicago, Ill.*

(T. D. 34991.)

Emergency revenue law—Stamp tax.

Certificates of ownership of sealskin garments (Cat. No. 4437) and affidavits for registration of personal and household effects (Cat. No. 4447) not subject to tax under the act of October 22, 1914.

TREASURY DEPARTMENT, *December 18, 1914.*

SIR: Referring to your letter of the 1st instant, I have to advise you that under the ruling of the Commissioner of Internal Revenue, certificates of ownership of sealskin garments (Cat. No. 4437) and affidavits for registration of personal and household effects (Cat. No. 4447) are not subject to taxation under the act of October 22, 1914, since they are not required by express provision of law.

Respectfully, ANDREW J. PETERS,
(103103.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 34992.)

Appraisers' returns.

Appraising officers in making returns of appraisement should not note items as disallowed, but should make specific notations of advance and state either the amount or percentage added.

TREASURY DEPARTMENT, *December 19, 1914.*

SIR: The department duly received your letter of the 6th ultimo, relative to the method of making returns of appraisement where certain items appearing on the invoice have been deducted on entry as nondutiable.

Under the decision of the Court of Customs Appeals (T. D. 34002) the duty of appraising officers is confined to ascertaining and returning the per se value of imported merchandise in the condition in which sold in the country of exportation, other notations made by such officers on the invoice being merely advisory and for the information of the classifying officers. In T. D. 34329 it was held by the Court of Customs Appeals that the disallowance of the deduction for cash payment was a decision of law rather than a finding of fact.

In view of these decisions the department concurs in your views that the appraiser's return should show the per se appraised value, and where items are deducted on entry so that the per se entered value is too low, or for any other reason the per se entered value is below the correct per se foreign market value, the appraiser should not note items as disallowed, but should make his advance by noting

on appraisement "appraiser adds to make market value," then stating either the amount or percentage added. Appraising officers will be governed accordingly.

Respectfully, ANDREW J. PETERS,
(102944.) *Assistant Secretary.*
APPRAISER OF MERCHANDISE, *New York.*

(T. D. 34993.)

Plant quarantine act.

Notice of Quarantine No. 19, prohibiting the importation of citrus nursery stock, published for the information and guidance of customs officers.

TREASURY DEPARTMENT, *December 18, 1914.*

To officers of the customs and others concerned:

The appended copy of Notice of Quarantine No. 19, prohibiting the importation of citrus nursery stock, issued by the Secretary of Agriculture under the plant quarantine act approved August 20, 1912, is published for the information and guidance of customs officers and others concerned.

The Secretary of Agriculture states that this quarantine covers all the citrus plants, including the orange, lemon, lime, grapefruit, pumelo, shaddock, citron, kumquat, the trifoliate orange, African cherry orange, etc., and also related plants, such as the wampi, orange jessamine, baelfruit, wood apple, tabog, etc., viz, the plants included in the subfamily or tribe *Citrateæ* or *Aurantieæ* of the family *Rutaceæ*, and that no citrus nursery stock loaded on or after January 1, 1915, as shown by consular invoices, will be permitted entry, but that this quarantine does not apply to the fruits of the plants named.

(92655–19.) ANDREW J. PETERS, *Assistant Secretary.*

UNITED STATES DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
FEDERAL HORTICULTURAL BOARD.

NOTICE OF QUARANTINE NO. 19.

The fact has been determined by the Secretary of Agriculture that a dangerous disease of citrus plants, known as the citrus canker, and also other citrus diseases, new to and not heretofore widely prevalent or distributed within and throughout the United States, exist in Europe, Asia, Africa, South America, North America outside of the United States, and foreign oceanic countries and islands, and are coming to the United States with imported citrus nursery stock.

Now, therefore, I, D. F. Houston, Secretary of Agriculture, under the authority conferred by section 7 of the act of Congress approved August 20, 1912, known as the plant quarantine act (37 U. S. Stat. L., p. 315), do hereby declare that it is necessary, in order to prevent the further introduction into the United States of citrus canker and other citrus diseases, to forbid the importation into the United States of all citrus

nursery stock, including buds, scions, and seeds, from the foreign countries and localities named and from any other foreign locality or country.

On and after January 1, 1915, and until further notice, by virtue of said section 7 of the act of Congress approved August 20, 1912, the importation from all foreign localities and countries of citrus nursery stock, including buds, scions, and seeds, except for experimental or scientific purposes by the Department of Agriculture, is prohibited.

The term "citrus" as used herein shall be understood to include all plants belonging to the subfamily or tribe *Citratæ*.

Done at Washington this 10th day of December, 1914.

Witness my hand and the seal of the United States Department of Agriculture.

[SEAL.] D. F. HOUSTON, *Secretary of Agriculture.*

(T. D. 34994.)

Marking of books.

Books are required to be marked to indicate the country of origin under subsection 1 of paragraph F of section 4 of the tariff act of October 3, 1913.

TREASURY DEPARTMENT, *December 19, 1914.*

SIR: The department refers to your letter of the 14th instant, in relation to the importation at your port of certain books which it appears were released without requiring the same to be marked so as to indicate the country of origin.

The department held in T. D. 19239 of April 18, 1898, and T. D. 23435 of December 24, 1901, that books not marked so as to indicate the country of origin and bearing the name and address of a domestic dealer were not prohibited importations under section 11 of the tariff act of July 24, 1897, and that as books were not usually or ordinarily marked with the name of the country of origin, they were not required to be so marked under section 8 of the same act. It will be noted, however, that section 8 required only such articles to be marked as were usually or ordinarily marked, while subsection 1 of paragraph F of section 4 of the tariff act of October 3, 1913, requires all articles to be marked which are capable of being marked without injury.

As books are capable of being marked without injury so as to indicate the country of origin, the department is of the opinion that the same should be marked irrespective of whether they bear the name and address of a domestic dealer.

In relation to your request for instructions, I have to state that books bearing the name of a foreign publisher, followed by a list of cities, are not considered by the department as legally marked to indicate the country of origin, and that such books should not be released until further marked to show the country of production. You will be governed accordingly.

Respectfully, ANDREW J. PETERS,
(68174–9.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34995.)

Emergency revenue law—Stamp tax—Baggage entries.

Baggage declarations and entries (Cat. No. 6063) subject to the same stamp taxes as regular entries under the act of October 22, 1914.

TREASURY DEPARTMENT, *December 21, 1914.*

SIR: Referring further to your letter of the 24th ultimo, I have to advise you that under the ruling of the Commissioner of Internal Revenue baggage declarations and entries (Cat. No. 6063) are subject to the same stamp taxes as regular entries under the act of October 22, 1914.

Respectfully, ANDREW J. PETERS,
(103103.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 34996—G. A. 7648.)

Reappraisement appeals—Act of 1913.

There is nothing in the law which requires a collector to notify an importer of the time within which it will be necessary for him to take his appeal in a reappraisement case. Any such notice on the part of a collector is merely an act of courtesy.

United States General Appraisers, New York, December 14, 1914.

In the matter of protest 762284 of Wilfred Schade Forwarding Co. against the assessment of duty by the collector of customs at the port of St. Louis.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

SOMERVILLE, *General Appraiser:* The protest relates to certain untrimmed straw hats imported under the tariff act of 1913, and which had been assessed for duty on the value as returned by the local appraiser. On appeal to reappraisement before a single general appraiser the appraised values were sustained, and the importers, under date of May 27, 1914, were duly notified by the collector of the decision of the general appraiser. No notice of appeal to the Board of General Appraisers from the said decision of the single general appraiser was filed until June 16, 1914, and the appeals were thereupon returned to the importers by the collector as having been filed too late. It is against this action of the collector that the importers have filed this protest. They claim that the collector's notice was defective inasmuch as it failed to contain the following words:

If you appeal from above reappraisements it will be necessary to do so within five days after date of this notice.

Section 3, paragraph M, of the tariff act of 1913, so far as pertinent, reads as follows:

* * * The decision of the general appraiser in cases of reappraisement shall be final and conclusive as to the dutiable value of such merchandise against all parties

interested therein, unless the importer, owner, consignee, or agent of the merchandise shall deem the reappraisement of the merchandise too high, and shall, within five days thereafter, give notice to the collector, in writing, of an appeal * * *.

There is, however, no provision of the tariff law requiring that the collector, in notifying an importer of the decision of a general appraiser should also notify him of the time within which it is necessary to take an appeal to the Board of General Appraisers in case of dissatisfaction, nor do the rules of procedure and practice before the board require this. As a matter of courtesy the collector may usually give such notice, but all that can be lawfully required of him is to inform the importer that a decision has been rendered fixing the value of the merchandise. Customs Regulations of 1908, article 894, *et seq.* An importer's duty is to consult the law and see that an appeal is filed with the collector within the necessary time.

It follows in the present case that the appeals were taken too late. The protest must therefore be overruled and the decision of the collector affirmed.

(T. D. 34997—G. A. 7649.)

Mohair waste.

MOHAIR WASTE "EJUSDEM GENERIS" WITH WOOL WASTE.

Paragraph 651 of the tariff act of 1913, provides specifically for wool waste. Its general provision, therefore, for "all other waste not specially provided for" more specifically applies to mohair waste than does the general provision for "waste not specially provided for" in paragraph 384.

United States General Appraisers, New York, December 14, 1914.

In the matter of protest 748490 of A. H. Ringk & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

HAY, *General Appraiser:* The merchandise in this case is reported by the appraiser as "short pieces of mohair waste from slivers and are picked and carded again for further use." It was assessed by the collector under paragraph 384 of the tariff act of 1913, and is claimed by the importers to be free of duty under paragraph 650 or 651. Paragraph 384 is to be found in Schedule N, or the sundries schedule, of the tariff law, and reads as follows:

Par. 384. Waste, not specially provided for in this section, 10 per centum ad valorem.

By the appraiser's description, therefore, and the collector's classification the merchandise in question must be treated as waste. The importers, however, contend that it is made free of duty by either paragraphs 650 or 651. Paragraph 650 is the free-wool paragraph of the law of 1913. Doubtless paragraph 651 is the only

paragraph upon which the importers rely. That paragraph reads as follows:

Par. 651. Wool wastes: All noils, top waste, card waste, slubbing waste, roving waste, ring waste, yarn waste, bur waste, thread waste, garnetted waste, shoddies, mungo, flocks, wool extract, carbonized wool, carbonized noils, and all other wastes not specially provided for in this section.

Were it not that the doctrine of *ejusdem generis* applies, and only wastes similar to those specifically named in paragraph 651 are to be considered as being covered by the general provision to be found in that paragraph for all other wastes, that provision would be in conflict with paragraph 384 under which the assessment is made.

Mohair is the hair of the Angora goat, and, in the absence of some commercial designation to the contrary, is a wool. It corresponds, we think, to the definition of wool given both in the Century and Standard dictionaries. In fact, the Standard Dictionary states that among the commercial wools are those derived from the Angora goat. An examination of the tariff law of 1913 indicates quite clearly that it was the purpose of that law to make raw wool free of duty. Schedule K is the schedule of the law in which those paragraphs are to be found which provide a duty upon articles of woolen origin. Of the 25 paragraphs of Schedule K all save one provide for articles of woolen origin which are in a more or less advanced state of manufacture. That paragraph is paragraph 305 and reads as follows:

Par. 305. Hair of the Angora goat, alpaca, and other like animals, * * * 15 per centum ad valorem.

The hair of the Angora goat being mohair, it is therefore carved out of the general policy of the law in favor of free wool and made a dutiable article. Paragraphs 306, 307, 308, and 309 of the same schedule all deal with the hair of the Angora goat advanced to some degree of manufacture and all made dutiable; but in no place is mohair waste or the waste of the hair of the Angora goat made dutiable. The maxim "*Expressio unius est exclusio alterius*" applies, we think, to the condition thus arising, that where in a statute specific things are mentioned, those not included are excluded from its operation; that is, where the general policy of a tariff law is to provide for admission free of duty of all commodities of a certain general character, and from out of that general policy there is carved an exception by making certain commodities of the same general class specifically dutiable, other forms of that commodity not enumerated, if not inconsistent with the remainder of the act or the purpose of the law as found in its general expression, are to be held free. Where Congress has with such particularity provided a duty upon the hair of the Angora goat and various articles manufactured therefrom, as has been done in paragraphs 305, 306, 307,

308, and 309, all products of the hair of the Angora goat not included in those paragraphs come, we think, under the general provision for wool. There can be but little doubt but what if Congress had made all wool free without specification, the hair of the Angora goat would have been held to have been included.

We therefore reach the conclusion that the provision of paragraph 651, "all other wastes not specially provided for in this section," more specifically provides for mohair waste than does the like provision in paragraph 384, for the reason that in the absence of other provisions of law on the subject, mohair waste would be considered as wool waste, one of the commodities specifically provided for in paragraph 651.

The protest is therefore sustained and the collector directed to reliquidate the entry accordingly.

(T. D. 34998—G. A. 7650.)

Camera tripods.

1. TRIPODS NOT PARTS OF CAMERAS.

Tripods composed of brass and designed for use in supporting cameras while in operation are properly dutiable under the provisions of paragraph 167 of the act of 1913 as manufactures of metal not specially provided for, as assessed, and not as parts of cameras under paragraph 380 of said act, as claimed.

2. APPRAISER'S REPORTS.

The report of the appraiser, wherein he sought to amend his original return by holding said articles to be properly classifiable as parts of cameras, is null and void and entitled to no legal effect whatever.

United States General Appraisers, New York, December 17, 1914.

In the matter of protest 741076/48263 of Sears, Roebuck & Co. against the assessment of duty by the collector of customs at the port of Chicago.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

FISCHER, *General Appraiser:* The merchandise in question consists of tripods designed for use in supporting photographic cameras while in operation. Duty was levied thereon at 20 per cent ad valorem under paragraph 167 of the act of 1913 as manufactures of metal not specially provided for, and they are claimed to be properly dutiable as parts of cameras under the following provision in paragraph 380 of said act:

Photographic cameras, and parts thereof, not specially provided for in this section; photographic dry plates, not specially provided for in this section, 15 per centum ad valorem; * * *.

At the hearing the importers submitted their case upon the report of the appraiser, which accompanied the protest when transmitted

to this board, and upon that report they ask for a favorable ruling. Said report reads as follows:

The merchandise consists of photographic camera tripods composed of brass, classified for duty at 20 per cent ad valorem under paragraph 167, act of 1913. This class of merchandise is now returned under paragraph 380. The claim of the protestant is well founded.

Notwithstanding the positive declaration of the local appraiser that "the claim of the protestant is well founded," we must confess that we are utterly unable to discover anything in the record before us which would warrant us in so holding. Neither do we for a moment concede that any apparent conclusion on the part of an appraiser with respect to the dutiable classification of an imported article bears with it any sanction of law, nor that it is even entitled to be credited with any legal effect whatever. So far as the classification of imported merchandise is concerned, such a declaration by an appraising officer, whose sole duty under the statute is to ascertain and determine the value of such merchandise, must be deemed to be absolutely meaningless, as it can not be considered as a finding of fact nor treated as a conclusion of law. As to the precise status to be given such apparent conclusions on the part of appraising officers, and the legal weight to be accorded them in the determination of the correct dutiability of an article of imported merchandise, see the recent opinion of the United States Court of Customs Appeals in the case of the National Hat Pin Co. *v.* United States (5 Ct. Cust. Appls., —; T. D. 34971).

While at the very outset this board experiences no hesitancy in holding that the assessment here complained of is the correct one and should not be disturbed, nevertheless, in order that a uniform practice may be adopted by classifying officers generally with respect to the proper dutiable classification of similar articles to those here under consideration, counsel for the Government, in a memorandum filed with the papers in this case, has requested a formal expression of the board's views concerning the questions here at issue.

According to the Century Dictionary, we find that a tripod is "a utensil or article having three feet or legs; specifically, a three-legged stand, usually hinged near the top, for supporting some instrument, as a camera or compass."

Apparently, then, the only plausible argument which could possibly be advanced by the importers in support of their contention that a tripod forms part of a camera is the fact that it is employed to support the camera. Now, if a tripod is a part of a camera merely because it is used to support the same while in operation, may it not be assumed with the same propriety that the leather container is equally a part of such camera because it is employed to hold the same when not in operation?

At best we consider a tripod a convenient, though by no means an essential, accessory to a camera, since it is a well-known fact that some commercial and practically all amateur photographers rarely employ tripods in connection with their photographic work. Its use in the photographic field would appear to be optional rather than essential.

Moreover, it will hardly be denied that photographic dry plates are absolutely indispensable in photographic work with a camera. At any rate, certain it is that they are infinitely more closely associated therewith than is a tripod. However, Congress in enacting said paragraph 380 was evidently of the opinion that such dry plates were not parts of cameras, for immediately following the provision for photographic cameras and parts thereof, and at the same rate of duty imposed thereon, is the provision for photographic dry plates. Surely, then, if photographic dry plates, which are well known to be absolutely necessary to the work of a camera, were not deemed by Congress to constitute parts thereof, we fail to see how it can be successfully contended that tripods, the use of which, so far as the general efficiency and operation of the camera is concerned, is wholly unnecessary or purely optional, are parts of cameras.

In Schoverling *v.* United States (142 Fed., 302; T. D. 26972) certain rubber recoil pads, intended to take the place of heel plates of guns, but the use of which, like the tripods now before us, was optional and not essential to the efficiency of the gun, were held not to constitute parts thereof.

Even though the claim alleged was a meritorious one, the protest in the case at bar would nevertheless have to be dismissed on the ground that it appears from the report of the collector that the importers have failed to comply with the provisions of paragraph N of section 3 of the tariff act of 1913, which provides that "such protest shall be deemed to be finally abandoned and waived unless within thirty days from the date of filing thereof the person who filed such notice or protest shall have deposited with the collector of customs a fee of $1 with respect to such protest." The importers herein having failed to prove that they have deposited the required fee on the filing of said protest, the same is hereby dismissed.

The decision of the collector covering the classification of the merchandise here under consideration is affirmed.

(T. D. 34999—G. A. 7651.)

Entry by pro forma invoice—Validity of bond taken for production of a duly certified invoice.

1. The importers made entry of merchandise upon a pro forma invoice in which the aggregate values thereof were stated to be $612. Before making such entry the importers were required to execute a bond for the production of a duly certified invoice, as required by subsection 28 of the tariff act of 1909.

2. When the importers sought to make entry of their merchandise they submitted to the collector an invoice certified to by the British vice consul located at Laguna, in the Republic of Mexico. Entry upon that invoice was refused for the reason that it was not certified to by an American consul. Later, however, upon the application of the importers, this invoice was accepted in cancellation of the bond given to produce a duly certified invoice, and thereupon the collector collected duties from the importers upon the basis of the values of the merchandise stated in such invoice, the aggregate of which was $1,065, regardless of the fact that the appraiser had appraised the merchandise at values stated in the pro forma invoice, such action of the collector being based upon a condition in the bond that the importers would pay the amount of duty to which it should appear by the duly certified invoice the merchandise was subject over and above the amount of duties estimated on the appraisement of said goods.

3. Subsection 4 requires only that a bond shall be given for the production of a duly certified invoice, and under article 182 of the regulations of 1908 the Secretary of the Treasury, under his general statutory powers, prescribed the penalty for such bond, in the case of dutiable merchandise, double the amount of the duties, or in the case of free goods the sum of $100.

4. The form of bond for the production of a duly certified invoice, which the importers were required by the collector to sign, contained a condition for the payment of duties on the values appearing in such duly certified invoice when produced, regardless of the appraised values of the merchandise.

5. *Held* (1) That the invoice certified to by the British vice consul and submitted in cancellation of the bond was not such a duly certified invoice as either the statute or the regulation of the Secretary of the Treasury required, and therefore the values stated therein could not be made the basis for the assessment of duty, even though it be held that in signing the bond the importers had waived their right to the statutory appraisement. (2) The condition of the bond requiring that duty should be paid on the basis of the values stated in the consulated invoice when produced was not warranted by statute and therefore void.—United States *v.* Hobbs (3 Ct. Cust. Appls., 256; T. D. 32567) cited and distinguished; United States *v.* Lee (106 U. S., 220), G. A. 4015 (T. D. 18617), United States *v.* Howell (26 Fed. Cas., 396), United States *v.* Legg (105 Fed., 930), and G. A. 5293 (T. D. 24265) cited.

HAY, *General Appraiser*, concurs on the ground that the condition of the bond requiring that duty should be paid on the basis of the value stated in the consular invoice was void unless voluntarily entered into; and that, under the doctrine of Stein *v.* United States (1 Ct. Cust. Appls., 36; T. D. 31007), the bond was signed in this case under moral duress.

United States General Appraisers, New York, December 18, 1914.

In the matter of protest 723498 of H. Marquardt & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (MCCLELLAND, SULLIVAN, and HAY, General Appraisers; HAY, G. A., concurring; SULLIVAN, G. A., dissenting).

MCCLELLAND, *General Appraiser:* The issue raised by this protest involves the right of the collector to reliquidate an entry on the basis of an invoice certified by a British consul which states higher values for an importation of heron feathers imported from Mexico than were stated in a pro forma invoice upon which the entry was made, in disregard of the values of such feathers found and returned by the appraiser.

The record shows that the merchandise was shipped from Laguna, in the Republic of Mexico, and that, by reason of the fact that there was no American consul located at that place, an invoice describing it was certified to by a British vice consul. When the importers sought to make entry on that invoice the collector refused to receive it, and thereupon the importers, having satisfied the collector that the failure to produce a duly certified invoice was due to causes beyond their control, were permitted to make entry by pro forma invoice upon giving a bond to produce a duly certified invoice, as required by subsection 4 of section 28 of the tariff act of 1909. This bond, however, contained other conditions than that named in the statute. The merchandise is thus described on the pro forma invoice:

One package containing crude heron feathers as follows:

24 ounces, long, at $24 per ounce	$576.00
90/100 ounces, cross, at $40 per ounce	36.00
	612.00

Official indorsements upon this invoice show that the examiner, on May 27, 1913, passed the invoice as being correct both as to quantity and value and that his action was approved by the appraiser. Attached to the papers, and thus a part of the official record, is a letter addressed to the collector in the following language:

NEW YORK, *June 27, 1913.*

HON. COLLECTOR OF CUSTOMS,
Port of New York.

SIR: On May 23 we entered one package containing crude heron feathers, which arrived from Laguna per steamer *Esperanza*, entry No. 142198, and against which we received a consular invoice signed by the British vice consul at Laguna. Our shipper claims that there is no American consul in the district who will legalize invoice and that he had, therefore, declared the same before the British consul.

We therefore respectfully ask you to cancel the bond for the production of consular invoice that we gave at the time of entry against this invoice. We also respectfully request that the port of Laguna be placed on the "no consul" list.

Very respectfully,

H. MARQUARDT & CO. (INC.),
Per FRED. J. HALZAPFEL.

Another indorsement upon the pro forma invoice, dated August 15, 1913, reads:

APPRAISER: Please note consular invoice attached and report as to actual quantity.
E. B. S.

And to this request the appraiser replied, three days later, as follows:

COLLECTOR: Weight found to be correct as checked on entered invoice.

The consular invoice referred to by the collector is the one upon which it was originally sought to make entry and which was rejected for the reason that it was certified by a British vice consul.

As indicated in the letter of protestants above quoted the collector was asked to accept this invoice in cancellation of the bond given to produce a duly certified invoice, and it appears that it was so accepted.

Section 2844 of the United States Revised Statutes provides under what circumstances such an invoice may be accepted. The full section is as follows:

If there is no consul or commercial agent of the United States in the country from which such merchandise was imported, the authentication required by the preceding section shall be executed by a consul of a nation at the time in amity with the United States, if there is any such residing there; and if there is no such consul in the country the authentication shall be made by two respectable merchants, if any there be, residing in the port from which the merchandise shall have been imported.

(See also Article 190, Treasury regulations, 1908.)

Very plainly such an invoice certified to by a foreign consul may only be accepted as complying with the statutory requirement for entry when it is made to appear that there is no consul or commercial agent of the United States in the country from whence the merchandise covered by the invoice was imported. This merchandise, as already stated, was imported from Mexico, and it follows on that mere statement that no foreign consul could in that country lawfully certify to an invoice of merchandise to be imported into the United States, nor could such an invoice be legally made the basis for entry of such merchandise, and such being true, it therefore follows that its production would not satisfy the condition of a bond given for the production from Mexico of a *duly certified* invoice.

In expressing these views we do not overlook T. D. 20302, wherein the collector of customs at Port Huron was advised to accept invoices from the Province of Ontario, in the Dominion of Canada, authenticated by two merchants. Said decision contains the following significant language:

In regard thereto, I have to state that a strict interpretation of the law would exclude the acceptance of invoices so authenticated for importations from Ontario, as several United States consular officers (46 at least) are stationed in that country, but, with a view of avoiding hardships to shippers, this department has been disposed to construe said section in a liberal manner, and has authorized the acceptance of such invoices in cases where the production of consular invoices in unfrequented, unsettled portions of a country would involve expense, and the Secretary of State has expressed the opinion that the word "country" as used in the law should be construed to mean not an entire political subdivision of the world, but the vicinity, consular district, or surrounding country which exports merchandise from the port at which the consular officer is located, and that the consular regulations should be construed liberally where a narrow construction would hinder trade and cause delay to the shippers.

It is not our purpose to criticize the action of department officers in seeking to relieve importers from embarrassment because of the geographical location of the points from which their wares come, but that which does concern us is the right of any officer of our Government to set aside or even modify the law.

In United States *v.* Lee (106 U. S., 220) that great jurist, Mr. Justice Miller, writing for the United States Supreme Court, said:

> No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the Government, from the highest to the lowest, are creatures of the law and are bound to obey it.
>
> It is the only supreme power in our system of government, and every man who, by accepting office, participates in its functions is only the more strongly bound to submit to that supremacy and to observe the limitations which it imposes upon the exercise of the authority which it gives.
>
> Courts of justice are established not only to decide upon the controverted rights of the citizens as against each other, but also upon rights in controversy between them and the Government; and the docket of this court is crowded with controversies of the latter class.
>
> Shall it be said, in the face of all this, and of the acknowledged right of the judiciary to decide in proper cases, statutes which have been passed by both branches of Congress and approved by the President to be unconstitutional, that the courts can not give a remedy when the citizen has been deprived of his property by force, his estate seized and converted to the use of the Government without lawful authority, without process of law, and without compensation because the President has ordered it and his officers are in possession?
>
> If such be the law of this country, it sanctions a tyranny which has no existence in the monarchies of Europe, nor in any other Government which has a just claim to well-regulated liberty and the protection of personal rights.

The collector's action in taking duty upon the basis of the values stated in the invoice certified as aforesaid, which aggregated $1,065, was doubtless to follow the reasoning of the Court of Customs Appeals in United States *v.* Hobbs (3 Ct. Cust. Appls., 256; T. D. 32567), but the circumstances disclosed in the case at bar are different from what the circumstances appear to have been in that case.

Here, while entry was made on a pro forma invoice and a bond was given for the production of a *duly certified* invoice, it is patent upon the face of the record that the terms of that bond have not been complied with by the production of a duly certified invoice, while in the Hobbs case, *supra*, it is clear that in compliance with the bond given upon entry an invoice duly certified was later produced, and as this invoice stated a greater value for the merchandise covered thereby than that stated in the pro forma invoice, the court held that the collector was right in exacting from the importer duty on the greater value for the reason that one of the conditions of the bond to produce such invoice was that he would—

> Pay to said collector the amount of duty to which it shall appear by such invoice said goods, wares, and merchandise are subject, *over and above the amount of duties estimated on the appraisement of said goods.*

The record discloses that the same condition was contained in the bond given upon entry of the merchandise in question, but as hereinbefore stated the certified invoice produced as a compliance with the bond was not such a *duly certified invoice* as the statute required

should be produced to meet the primary condition of the bond, and therefore the values therein stated could not be made the basis for setting aside the action of the appraiser and the taking of duty upon other or greater values than those found by that officer, even if it were held that all of the conditions contained in the bond were enforceable against the importers.

The respective duties of the appraiser and the collector are clearly defined by law, the function of one being to—

Ascertain, estimate, and appraise (any invoice or affidavit thereto or statement of cost or of cost of production to the contrary notwithstanding) the actual market value and wholesale price of the merchandise at the time of exportation to the United States in the principal markets of the country whence the same has been imported. (Subsection 10 of section 28 of the tariff act of 1909.)

The function of the other is to assess the appropriate rate of duty on the merchandise based upon the value thus found as provided in subsection 14 of said act.

The action of the appraiser in fixing the foreign market value of imported merchandise is final and conclusive as against both the Government and the importer unless either the collector or the importer shall appeal therefrom as provided in subsection 13 of the act of 1909, *supra*, and the assessment of duty by the collector is also final and conclusive against all persons interested therein unless the owner, importer, consignee, or agent of the merchandise shall give notice in writing to the collector within the statutory time allowed therefor of dissatisfaction with such assessment. (These citations of the act of 1909 are explained by the fact that the importation was made during the life of that act.)

We know no law that vests in the collector the right to disregard in the assessment of duty the foreign value finally found by the appraising officer. Stewart, Howe & May Co. (G. A. 4015; T. D. 18617). The question of the right of the collector so to do does not appear to have been presented to the court in the Hobbs case, *supra*, and we are inclined to believe that if it had been the conclusion reached by the court might have been different. Writing for the court in that case, Judge De Vries said:

The provision of the statute inuring to the benefit of the importer in this case is that making an appraisement final in the absence of appeal. Without discussing whether or not that finality extends to and bars the collector from acting under the act of June 22, 1874, we think the provision one which may be waived by express stipulation by the importer. The express terms of the bond constitute such a waiver and stipulate that duties will be paid upon the certified invoice valuation. The bond particularly stipulates that, in consideration of the early release of his goods, to effect which and the protection of the revenues appraisement may be necessary, upon production of the certified invoice he will pay the amount of said invoice "over and above the amount of duties estimated on the appraisement of said goods." As liquidation is nothing more nor less than the taking of duties by the collector, it must be

held that the importer in this case has not only waived the benefit of the earlier appraisement, but has expressly stipulated that duties shall be finally taken in the amount here taken by the collector.

From this language it is evident that the action of the collector in reliquidating the entry and exacting duty on the basis of the values stated in the certified invoice produced to cancel the bond given by the importer was affirmed by the court solely upon the ground that the importer in signing the bond had not only waived the benefit of the earlier appraisement, but had expressly stipulated that duties should be finally taken on the values stated in such certified invoice, provided such values were greater than those stated in the pro forma invoice. As we have already noted, the statute, subsection 4, *supra*, simply provides that—

The collector shall require a bond for the production of a duly certified invoice.

Section 251 of the United States Revised Statutes, defining certain powers of the Secretary of the Treasury, contains the following:

He shall prescribe forms of entries, oaths, bonds, and other papers, and rules and regulations, not inconsistent with law, to be used under and in the execution and enforcement of the various provisions of the internal revenue laws, or in carrying out the provisions of law relating to raising revenue from imports, or to duties on imports, * * *.

It is to be observed that the Secretary of the Treasury under this provision of the statute may only make such regulations as are not inconsistent with law. In pursuance of this power, presumably, the Secretary made and promulgated article 182 of the Treasury regulations of 1908 in the following form:

No merchandise exceeding $100 in value, except personal effects accompanying a passenger, shall be admitted to entry without the production of a duly certified invoice thereof, unless the importer shall make application under oath, showing that it is impracticable to produce such invoice. This affidavit shall be accompanied by a statement of value or pro forma invoice on form catalogue No. 607.

The collector shall make careful examination of the facts and require the production of any available evidence to assist in the ascertainment of the value of the importation, and he will allow no entry of merchandise exceeding $100 in value under this provision unless he shall be satisfied that the failure to produce a certified invoice is due to causes beyond the control of the importer; and the latter shall be required to give bond on form catalogue No. 583a for the production of a duly certified invoice. The penalty named for failure shall be double the amount of estimated duties, or if the merchandise be free of duty the sum of $100. When the certified invoice is received it must be compared with the entry, and any duty remaining due must be collected. The provisions of the law regarding penalties for undervaluation are alike applicable to pro forma invoices, but no refund of duty shall be made because a certified invoice exhibits a lower value than that shown by the pro forma invoice. (See art. 280.)

The penalty for failure to produce the invoice is expressly stated to be, in the case of dutiable merchandise, double the amount of the estimated duties. Since the statute provides no penalty for a

bond given to produce a consular invoice it may be presumed that the Secretary of the Treasury is vested with the power to name the penalty for the failure to produce such an invoice, but whether under the statute the collector may, either of his own motion or by direction of the Secretary of the Treasury, require the importer to subscribe to a condition in such bond that he will pay duty upon the value stated in such invoice when produced over and above the amount of duties estimated on the appraisement, in order that he may obtain the privilege of entering his merchandise without a consulated invoice, presents a very different proposition.

If the importer satisfies the collector that his failure to produce a duly certified invoice for merchandise valued over $100 is due to causes beyond his control, his right to make entry on a pro forma invoice is absolute under the statute, provided he shall give a satisfactory bond *for the production of a duly certified invoice*, and therefore, beyond naming the penalty for failure to produce such an invoice, we are clearly of the opinion that neither the Secretary of the Treasury nor the collector could go. If this view of the law be correct, it follows that the added condition that the importer shall pay duties on the values stated in the certified invoice produced to satisfy the bond *over and above the amount of the duties estimated on the appraisement of the merchandise* covered thereby is unlawful, inasmuch as it is imposed without lawful authority and deprives the importer of his statutory right to pay duty on the foreign market value of the merchandise as ascertained and fixed in lawful manner by the appraising officer.

We do not pretend to say that the importer might not have waived this right, but it is a matter of common knowledge among those familiar with customs practices in the entry of merchandise that the forms are stereotyped and will not be changed to meet the criticism or desires of persons seeking to enter merchandise. The form of bond for the production of a duly certified invoice adopted for use by the collector as a compliance with the statute and article 182 of the Treasury regulations, *supra*, contains the provision for payment of duties on the basis of the values stated in the certified invoice submitted for its cancellation, provided they are greater than those found on appraisement. This form of bond is an official paper promulgated with official sanction. Every person desiring to enter merchandise in the absence of a duly certified invoice must subscribe to its conditions. It is not therefore discretionary with the importer whether he shall subscribe to the bond containing that condition, for the reason that if he fails to do so he will be refused entry of his merchandise.

It appears from the testimony of Acting Deputy Collector Fredrichs that the bond given by Marquardt & Co. was a blanket one

designed to cover all merchandise imported by them and entered on pro forma invoices during a period of six months from its date, but that if a single bond had been given in this case covering only the merchandise described on the entry the conditions would have been exactly the same, and there was no discretion with the importers as to whether any or all of the conditions contained in the printed form of bond be subscribed to by them. In this connection this witness testified as follows:

Q. Just refer to the conditions in this bond, first, that the penalty shall be double the amount of the duties, that would be the same in a single bond?—A. Yes, sir.

Q. As to that condition which provides that he shall pay the duties on the values stated in the certified invoice, would that be in the single bond?—A. The same.

Q. Therefore, there is no discretion on the part of the importer; he must subscribe to those conditions if he wants to enter his goods on a pro forma invoice?—A. Yes.

Q. It is either that form or no entry?—A. That is what it amounts to.

Q. Or if he came with a pro forma invoice and objected to any of the conditions of the bond, and wouldn't, therefore, sign it, he couldn't make his entry?—A. Right.

Q. He must either subscribe to those conditions or not enter his goods?—A. That is right.

Upon the conditions thus shown, it manifestly was not optional with protestants whether they would subscribe to the bond's condition that they would pay duties on the values stated in the certified invoice to be produced later in cancellation of the bond, regardless of the legally appraised values. Had the importers refused to sign the bond in the form prescribed, the merchandise would not have been admitted to entry. Signing the bond by the importers under these conditions was not a voluntary act, and for that reason can not be held to be a waiver of any of their statutory rights.

In Stein *v.* United States (1 Ct. Cust. Appls., 36; T. D. 31007), it was held that where an item was inserted in an invoice abroad for the reason that if it were omitted it would be later included by the Government with the exaction of a penalty for its omission, such an insertion was not voluntary, but was made under duress. If such an insertion was made under duress, what may be said of the collector saying in effect to these importers when they sought to enter their merchandise on a pro forma invoice, "Sign this form of bond or entry of your merchandise will not be allowed until you produce a duly certified invoice"?

We think the condition of the bond, regarding payment of duties on the basis of the values stated in the invoice to be produced later, *over and above the amount of duties estimated on the appraisement*, was void, for the reason that it exceeded the requirements of the statute. United States *v.* Lee, *supra.*

In United States *v.* Howell (26 Fed. Cas., 396), Judge Washington says:

It has been made a point whether this bond, not being required to be taken by any act of Congress, is a valid one. My opinion upon this point is that where a statute

requires an official bond to be taken and prescribes substantially the terms of it, it must conform to the requisitions of the statute, and if it go beyond them it is void, so far at least as it exceeds those requisitions.

These importers could not be deprived of their lawful rights by unlawful exactions of the Secretary of the Treasury or the collector. United States *v.* Legg (103 Fed., 930), G. A. 5293 (T. D. 24265).

The collector's action must be reversed on two grounds:

First. The invoice produced to cancel the importers' bond to produce a duly certified invoice was not such an invoice as either the statute or the bond called for, and therefore the values therein stated could not be made the basis for the assessment of duties, even though it were held that in signing the bond aforesaid the importers had waived their right to the statutory appraisement.

Second. That the condition of the bond requiring that duties shall be paid on the basis of the values stated in the consulated invoice to be subsequently produced for its cancellation is not warranted by statute, and is therefore void.

The protest is sustained.

CONCURRING OPINION.

HAY, *General Appraiser:* I concur with General Appraiser McClelland in the decision of this case, but desire to place that concurrence upon the ground that the provision in the bond in question by which the importers agreed to pay duty upon the value as stated in the consular invoice did not constitute a waiver of their right to the appraisement and reappraisement of the merchandise in question. In a question of the character that here arises it is all important to have clearly in mind the constitutional duties of the coordinate branches of the Government. Congress, and Congress alone, makes the laws. The executive and administrative officers enforce the laws. If the fabric of our Government is to be preserved, these two functions must be kept distinct. In this case Congress provided by law that all imported merchandise should be appraised; provided further that if the importer is dissatisfied with the appraisement of the appraiser of the port he may appeal to a general appraiser and have his merchandise reappraised, and from that official to a board of general appraisers for a re-reappraisement of the merchandise. Congress also, by law, provided that an importer might enter his merchandise upon a pro forma invoice, in the absence of the consular invoice provided by law as the usual method of entering the merchandise. In this connection it is further provided by the law of Congress that where merchandise is entered upon a pro forma invoice the importer should give to the collector a bond for the production of a consular invoice. There is no provision in that law, or in any law

of Congress, that requires a man, in that bond or any other obligation, moral or written, to waive a right which the law gives him. The law of Congress also provides that the Secretary of the Treasury, an administrative or executive officer of the Government, shall prescribe forms of entries, oaths, bonds, etc., and make rules for the administration of customs laws. Such regulations and rules as the Secretary may make and such forms of entries, oaths, bonds, etc., as he may prescribe must not be inconsistent with law. Every action of the Secretary, therefore, or of any other executive officer of the Government which annuls a provision of law, renders it ineffective, or adds to or takes from it, is void, as without the power that has been delegated to the executive by the Constitution. This doctrine has been laid down many times by the Supreme Court of the United States, and there is probably no more clearly expressed decision than that of United States *v.* Lee (106 U. S., 196), cited by General Appraiser McClelland in his opinion.

The provision in the bond in question which binds the importer to pay duty upon the value stated in the consular invoice, being placed there by an executive officer in excess of authority vested in him by the law of Congress, is therefore void unless the same is voluntarily entered into by the importer.

There is no doubt that an importer may waive his right to an appraisement or a reappraisement of his merchandise. That waiver, however, must be voluntarily entered into. The facts, I think, show that in the case at bar there was not such a voluntary waiver of this right as would bind the importer. But it is my opinion that he signed the bond containing that waiver under that form of moral duress discussed by the Court of Customs Appeals in Stein *v.* United States (1 Ct. Cust. Appls., 36; T. D. 31007). It seems to be the doctrine of that case that the action of the importer in complying with a requirement by a customs officer, when the fact of that requirement is well known, is not a voluntary one when, in order to enter his merchandise, he is required to do a certain thing the omission of which would cause his entry to be refused or the omission would be supplied for him by the customs officer. In the case at bar the testimony shows that the importer would not have been permitted to enter upon a pro forma invoice except upon filing a bond containing the condition under consideration, and that this fact was well known and was a uniform practice at the collector's office. The importer and his broker knew that the right to enter upon a pro forma invoice which the law gave him could only be exercised by signing the bond containing the waiver in question. The waiver was therefore not the importer's voluntary act, and, under the decision of Stein *v.* United States, *supra*, it was not binding upon him.

It was not necessary for the importer to offer to give a different bond, or one more in harmony with the law, as the law never requires a man to do an unnecessary thing, and it was well known that no other bond would be accepted. Meyer & Lange *et al.* (G. A. 7641; T. D. 34927) and cases therein cited.

DISSENTING OPINION.

SULLIVAN, *General Appraiser:* I can not agree with the conclusions reached by my brothers, and for a clear understanding of the matter in controversy an extended statement of facts may be necessary.

On May 23, 1913, there was entered at the customhouse in the city of New York by H. Marquardt & Co. (Inc.) one package containing crude heron feathers from Laguna, Mexico. The invoice offered was signed by the British consul at that point, the statement being made on the consular certificate, "there is no American consular officer in this district." The value shown by this invoice amounted to $2,130 Mexican silver. On the same date was filed an application by Anthony J. McCarty, attorney for the firm of H. Marquardt & Co. (Inc.), under oath, to enter merchandise without certified invoice. The value set forth on the pro forma invoice amounted to $612 American currency, and it was entered at that value. The merchandise under the pro forma invoice was passed, the value stated therein being approved. In order to obtain the merchandise a bond was entered into as follows:

Know all men by these presents, that we, H. Marquardt & Co., Incorporated, as principals, and ——— of ——— and ———, A. J. McCarty, as sureties, are held and firmly bound to the United States of America in the sum of ten thousand dollars for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns forever, jointly and severally, firmly by these presents. Witness our hands and seals this 18th day of April, 1913. Whereas the above bounden principal expects to import goods, wares, and merchandise into the port of New York, and whereas the said principal may make application to the collector of customs at the said port for permission to make entry upon a pro forma invoice of shipments for which a duly certified consular invoice shall not have been received; now, therefore, the conditions of this obligation are such that if the above bounden principal shall within six months of the time of entry of any goods consigned to him and entered on a pro forma invoice upon his application therefor, in pursuance of the provisions of subsection 4 of section 28 of the tariff act of August 5, 1909, within six months from the date hereof, produce to the collector of customs at said port a duly certified consular invoice of such goods, wares, and merchandise, *and shall pay to the said collector the amount of duty to which it shall appear by such invoice the said goods, wares, or merchandise over and above the amount of duties estimated on the appraisal of such goods, wares, and merchandise,* then this obligation shall be void; otherwise it shall remain in full force and effect; and the above bounden obligors do for themselves, heirs, executors, administrators, successors, and assigns, jointly and severally, covenant and agree with the United States of America that the collector aforesaid shall indorse on this bond

the estimated duties of each importation as made, and the date thereof, and that the penalty of this bond shall be held to be double such estimated duties on importations made and indorsed as aforesaid.

(Signed) H. MARQUARDT & Co. (INC.),
A. J. McCARTY, *Attorney*,
35 South William Street.
A. J. McCARTY,
21 ta 24 State Street.

Signed, sealed, and delivered, and done in the presence of R. J. McAvoy.

Upon the filing of this bond the merchandise was delivered to the importers. Afterwards, on the 27th day of June, 1913, the importers wrote the following letter to the collector of customs:

Hon. COLLECTOR OF CUSTOMS,
Port of New York.

SIR: On May 23 we entered one package containing crude heron feathers, which arrived from Laguna, per steamer *Esperanza*, entry No. 142198, and against which we received a consular invoice signed by the British vice consul at Laguna. Our shipper claims that there is no American consul in the district who will legalize invoice, and that he had therefore declared the same before the British consul.

We therefore respectfully ask you to cancel the bond for the production of consular invoice that we gave at the time of entry against this invoice. We also respectfully request that the port of Laguna be placed on the "no consul" list.

Very respectfully,

H. MARQUARDT & Co. (INC.),
Per FRED J. HOLZAPFEL.

On the filing of the consulated invoice, as referred to in the letter, liquidation was had September 10, 1913, based on the value as shown by this consulated invoice. Afterwards, and on the 12th day of September, 1913, the importer filed a protest against such liquidation as follows:

NEW YORK, *September 12, 1913.*

SIR: We hereby protest against the payment of $81.40 additional duty, charged erroneously on addressed one package feathers, imported by H. Marquardt & Co. (Inc.), steamer *Esperanza*, May 23, 1913, entry No. 142198, entry liquidated September 10, 1913, claiming that under existing laws said goods are only liable to a duty of 20 per cent ad valorem on the entered value of $612. We further declare that the value expressed in the consular invoice received later and used to cancel bond is not its true value, and is excessive. Also that this shipment was sent to us on consignment for sale at the market price. Also that the consular invoice was not made up or sworn to by the owner, Messrs. Ed. del Rivero e Hijos, of Palizada, but by his agent at the seaport, who probably, in the absence of instructions and without knowledge of their true value, declared the value as per invoice. We further declare that the actual net proceeds of this sale, as per copy of the account of sale attached, is $602.56 United States currency. We pay the amount exacted in order to get possession of our goods, claiming to have the same refunded.

Respectfully,

H. MARQUARDT & Co. (INC.),
A. J. McCARTY, *Attorney*,
35 South William Street.

Hon. JOHN PURROY MITCHEL,
Collector of Customs.

At the hearing December 5, 1913, the importers, through their chief clerk, Fred. J. Halzapfel, testified that, in arriving at the market value set forth in the pro forma invoice, he did so by taking the New York prices, less charges for selling and the duty. He admitted he was without knowledge of the foreign value, claiming there was none; that the merchandise is picked up by the principal and forwarded to New York, and if there is a market it is in New York rather than in Mexico. All the testimony offered by the importers was with reference to value. After submission on questions arising as to the conditions of the bond, it was deemed prudent by the board to have the cause reopened; that the facts regarding the execution and delivery of the bond might be made a part of the record.

On the 19th of November, 1914, the collector produced the bond, through its proper custodian, who declared that it is Customs Cat. No. 3466 (art. 182 of the Customs Regulations of 1908); that it is the uniform bond given under the circumstances shown by this record; that there are two classes of bonds, general and special, the special bond covering transactions from day to day, while the general bond runs for a period of at least six months; that practically the conditions of both bonds are the same; that the administrative officers at the customhouse have no discretion with regard to their conditions, but they must be subscribed in the form prepared by the Treasury Department. It was further shown that the importer is not obliged to make entry on a pro forma invoice, but may wait until he receives a consular invoice before entering his goods; that the filing of a pro forma invoice and the giving of a bond enables the importer to obtain possession of his goods promptly. There is not a particle of testimony that the importer objected to the signing of the bond or requested reappraisement on the filing of the consular invoice. When informed that the filing of such bond and of a pro forma invoice would entitle him to the possession of his merchandise, it was evidently satisfactory. Whether he read or knew of the conditions of the bond is not disclosed. He signed it and obtained possession of his goods. When reliquidation was had and when called upon to pay an additional duty, he then filed the protest herein set forth.

This record presents the following questions:

First. Would the filing of a consulated invoice, duly verified by a British consul, no American consul residing in that district, comply with the requirements of the law?

Second. Was the filing of the bond a waiver of reappraisement?

(1) It is claimed that the British consul of the district from which the merchandise was exported, who consulated the invoice, was without power to do so, because it will be presumed there were American consuls residing within the territory of Mexico. It will

be observed that it is admitted there was no American consul in the district from which the merchandise was exported. With reference to this proposition the law declares: If there is no consul or commercial agent of the United States in the country from which such merchandise was exported, the authentication required by the preceding section shall be executed by a consul of a nation at the time in amity with the United States, if there is any such residing there; and if there be no such consul in the country, the authentication shall be made by two respectable merchants, if any there be, residing in the port from which the merchandise shall have been exported. Revised Statutes of the United States, section 2844.

Did Congress intend by the enactment of this statute that if there was an American consul anywhere within the territory of Mexico he should be procured to verify the invoice, or did it mean within the district in which the goods were manufactured or purchased? It has been the rule in the ascertainment of values in reappraisement that it is sufficient to prove market value in the district or vicinity in which the merchandise was manufactured or purchased. In other words, the market for an article at Berlin may be different from that of Strassburg, and in referring to the country in which the market value is sought to be established it does not mean the entire nation, but the territory or district in which the merchandise was manufactured or purchased. Vladivostok is a long distance from St. Petersburg, or Petrograd; would it be insisted that to obtain the signature of an American consul to an invoice of goods purchased at Vladivostok you must exhaust the entire Russian Empire to ascertain what American consuls are resident therein, even to the extent of going to St. Petersburg? It seems to us this would be such an impediment to commercial transactions as not to be within the intent of Congress. The Treasury Department has in a general way, in its instructions to consuls, construed this statute along these lines. We would not, therefore, feel justified in placing legal impediments to a commercial transaction that was at least contrary to commercial usage and without the spirit of the statute. I am clearly of the opinion that the action of the British consul was within the terms of the statute and justified the acceptance of the invoice by the collector.

(2) It is insisted that the bond given containing the provision—

* * * Pay to the said collector the amount of duty to which it shall appear by such invoice the said goods, wares, or merchandise were subject, *over and above the amount of duties estimated on the appraisal of such goods, wares, and merchandise*—

is void; that this provision is equivalent to the waiver of appraisement, a right to which every importer is entitled. No one will dispute that the appraisement of merchandise is a right granted by statute to importers, of which they can not be deprived except by

their own act. It must be admitted that an importer could waive this requirement. It was entirely for his benefit, and if in writing he plainly stated he waived this condition it could be legally done. In every instance the Government will require an appraisement of the merchandise. This is statutory. No consulated invoice being filed on entry of the merchandise, a pro forma invoice was filed and the goods appraised. This act did not give the merchandise to the importer. He was still required to obtain a consulated invoice and give bond if he wished the possession of his merchandise. The statute provides:

> And when entry of merchandise exceeding one hundred dollars in value is made by a statement in the form of an invoice the collector shall require a bond for the production of a duly certified invoice. (Subsection 4, section 28, tariff act of 1909.)

It is insisted that this statute did not justify the exaction of a bond by the Government providing for anything more than the production of a duly certified invoice; that the condition waiving appraisement is contrary to law, and therefore void.

Section 251 of the Revised Statutes defines the powers of the Secretary of the Treasury with reference to the forms of entries, oaths, bonds, and other papers, and gives him the authority to make rules and regulations not inconsistent with law, to be used in the execution and enforcement of the various provisions of the internal-revenue laws or in carrying out the provisions of law relating to raising revenues on imports or to duties on imports. Therefore the bond in question is one directed by the statute and drawn by the Secretary of the Treasury. The additional terms contained in the bond were incident to this statute and were necessary to give it vitality and force. The bond need not be within the strict provisions of the statute to be legal; if it is within the spirit of the statute it is sufficient. That the execution of the bond was voluntary will not admit of doubt. It was not extorted; it was not obtained by duress. The record discloses its execution was so voluntary that even the importer would not testify that its exactions were burdensome. A bond required to be given by a statute, if within its terms, has none of the elements that constitute legal duress. It is admitted there was no actual duress to obtain the signature. Many bonds are given to the departments of our Government the conditions of which are not strictly within the terms of the statute. The decision of every case depends so much on the facts that a case becomes a criterion only when the facts involved are quite similar to the one under discussion. The case of Stein *v.* United States (1 Ct. Cust. Appls., 36; T. D. 31007) in its facts is so dissimilar as not to have a bearing on the case at bar. In every case cited there was objection in some form to the doing of the act upon which the duress hinged. In this case the record does not

disclose up to the present, by word or act, oral or in writing, any objection to the bond or to its form. The facts do not amount to moral duress.

Moses *v.* United States (166 U. S., 571) had reference to a bond given to the United States conditioned that a property and disbursing officer of the War Department should faithfully discharge his duties and faithfully account for public money and property committed to his charge. It was held to be such a bond as the Secretary of War had power to require, and the disbursing officer was bound to have it executed and filed. The facts were that a bond was required from a disbursing officer by his superior officer without any statute providing therefor, and the disbursing officer was informed that if he did not comply he would be removed as such officer. It was sought to prove this fact and then insist that the Secretary of War was without power to require such bond. The Supreme Court, through Mr. Justice Peckham, said:

We think the evidence was properly excluded, although there was no statute specially providing for the execution of a bond by one occupying the position of Lieut. Howgate. The order of the War Department that a bond should be executed was one which the Secretary of War had power to make.

It was held in the case of United States *v.* Tingey (5 Pet., 115), that the United States had a right to take a bond to insure the faithful performance of duty on the part of an individual or officer where such bond was voluntarily given and was not in violation of any provision of law. The particular bond in that case was held void as being extorted under color of office because it was in plain violation of the statute in regard to giving such bond, and it was demanded of the party upon the peril of losing his office. The court said under those circumstances that the bond was an illegal instrument, "for no officer of the Government has a right, by color of his office, to require from any subordinate officer, as a condition of holding office, that he should execute a bond with a condition different from that prescribed by law." The court also said, however: "That a voluntary bond taken by authority of the proper officers of the Treasury Department, to whom the disbursement of the public moneys is intrusted, to secure the fidelity in official duties of a receiver or an agent for disbursery of public moneys, is a binding contract between him and his sureties and the United States, *although such bond may not be prescribed or required by any positive law.* The right to take such a bond is in our view an incident to the duties belonging to such a department; and the United States having a political capacity to take it, we see no objection to its validity in a moral or a legal view." See also United States *v.* Maurice (2 Brock., 96), Jessup *v.* United States (106 U. S., 147), where the same views are set forth.

The consideration or the condition of the bond must not be in violation of law; it must not run counter to any statute; it must not be either *malum prohibitum* or *malum in se.* Otherwise and for all purposes of security a bond may be valid *though no statute directs its delivery.*

We do not understand by the decision in Peters, above cited, that the meaning of the term "voluntary bond" is that the bond must have been offered and pressed upon the Government when never asked for or demanded by it. It is a voluntary bond when it is not demanded by any particular statute or regulation based thereon and when it is not exacted in violation of any law or valid regulation of a department. Having the right to take a bond, the Government in a case like this has the right to demand it from the officer, and to say to him that if he do not give it he will not be continued as a

"property and disbursing officer of the Signal Service." Such a demand when complied with does not amount to the illegal exaction or extortion of the bond. The case of a bond so procured differs radically from a case like that of Tingey, *supra*, inasmuch as the bond in the latter case was extorted from a reluctant officer with a condition therein contained different from that which the statute called for.

Applying that rule to the case at bar it sustains the right to exact the bond; first, the statute requires a bond; second, requiring the giving of a statutory bond does not become an act of extortion nor bring it within the legal definition of duress; third, the condition contained in the bond is incident to the right of its exaction. Observe, the importer in this case did not have to give this bond. He could have permitted his merchandise to remain in the custody of the United States and upon the filing of his duly certified consular invoice have his goods appraised. But he said, "No; I wish my merchandise now." There may have been many reasons therefor. It may be that if he waited until receipt of the consular invoice he would be unable to dispose of the merchandise. Whatever his reason, he gave the bond. However, the Government said in effect, "We require you to give a consular invoice, and, in addition, if you take the goods prior thereto, we will ask you to give a bond and be governed by the value stated in the consulated invoice," and the importer answered, "Yes; that is satisfactory." Now, that instrument has two distinct characteristics: First, it is a waiver on the part of the importer of the statutory right given to him to have his merchandise appraised the second time; and, second, it is a contract between himself and the Government that if it will deliver the goods it will be deemed a sufficient consideration for the waiver of this right. So that, no matter which horn of the dilemma you take, this is a valid instrument, whether a bond or contract, and the Moses case has shown plainly that there may be a valid bond, although no statute directs its delivery.

In United States *v.* Dieckerhoff (202 U. S., 302; T. D. 27366) the Government of the United States sought to obtain, upon a bond given it, the full value of the merchandise. It was pleaded the Government could only recover actual damages. It was held the Government was not required to prove actual loss or damages, but was entitled to recover the full amount specified in the bond. In that case the court said:

> While the statute does not provide in express terms for a bond thus conditioned, it seems to be well settled that, although not strictly in conformity with the statute, if it does not run counter to the statute and is neither *malum prohibitum* nor *malum in se*, it is a valid bond, although not in terms directly required by the statute.

And the court cited Moses *v.* United States, *supra*, and approved of the doctrine therein enunciated.

It will be noted that an appraisement was had on the pro forma invoice and return duly made to the collector. That became for

dutiable purposes the minimum value of the merchandise. It now became the duty of the importer to produce a certified invoice, but the law provided its production disclosing a value less than the pro forma invoice would not inure to the benefit of the importer and require the Government to refund excess duties, the statute in such circumstances declaring that in no event shall duty be less than the entered value. It therefore follows it was not the thought of Congress to have a reappraisement based on a consulated invoice where a pro forma invoice is filed, appraisement had thereon, bond given, and possession taken by the owner. If the value shown by the consulated invoice was greater than the entered value as shown by the pro forma invoice duties were to be paid on the excess without any action of the appraiser.

In United States *v.* Bennett (2 Ct. Cust. Appls., 249; T. D. 31975), this subject was clearly discussed, and after a careful consideration and exhaustive examination of authorities, the court arrived at the conclusion that no reappraisement should be had on a consular invoice if a pro forma invoice had been filed, merchandise appraised thereunder, bond given, and possession of the merchandise taken.

In United States *v.* Frank (2 Ct. Cust. Appls., 239; T. D. 31973), the court held to the same effect, and declared its conclusion to be in accord with the regulations and practice in respect to pro forma invoices.

The bond given in United States *v.* Bennett, *supra*, was under the act of June 10, 1890, and is substantially in the form of the bond in the case at bar. In fact, the filing of a pro forma invoice and the giving of bond containing conditions similar to those in the case at bar has existed for such a period of time, and received construction by administrative officers similar to that now under consideration during numerous tariff acts, that it precludes the idea that this bond is something new and contrary to statute or to the practice and regulations of the Treasury Department. By reason of this length of time, practice, and procedure, it has become as much a part of the tariff law as if written therein. Whenever the question of a pro forma invoice and the giving of a bond has become before the court, the valuation under the pro forma invoice has been received and acted upon by the Government, and on the filing thereafter of a consulated invoice in accordance with the bond, the value stated therein has always been taken as the dutiable value if in excess of the pro forma invoice.

In United States *v.* Hobbs (3 Ct. Cust. Appls., 256; T. D. 32567), this doctrine is fully enunciated and upheld in a carefully worded opinion by the Court of Customs Appeals in which the court stated:

Aside, therefore, from the manifest intent of the statute permitting a pro forma invoice and entry thereupon, directing the production of a certified invoice, and the

necessarily implied purpose thereof, and the clothing of the collector with a general power of reliquidation within one year, all conducing to the conclusion that this reliquidation was within the intent of the Congress as expressed in the statutes, as well as in conformity with the regulations of the department duly promulgated and enforced since the year 1857, the action of the collector in this case was supported by the express written stipulation of the importer, duly executed upon a valid consideration.

I could not improve upon this clear expression approving of the action of the collector in causing the execution of a bond of this character prior to the delivery of the merchandise. It goes without saying that when a statute empowers the Secretary of the Treasury to provide a bond, or if it does not so state, but says a bond must be exacted, it becomes the duty of the Secretary to provide such instrument as will protect the rights of the Government, and in doing so he is not acting entirely as a ministerial officer. It is well known that the heads of the executive departments of our Government are more than ministerial officers, and in many instances have quasi judicial powers. This bond that has been used for such a length of time can not be ruthlessly stricken out because, forsooth, this importer is aggrieved at the value placed upon his goods. By his action he waived conditions of the statute passed for his benefit. He voluntarily signed it. As heretofore stated, the acceptance of the merchandise prior to the receipt of the consulated invoice was a sufficient consideration for him to waive this requirement, guaranteed to him by the statutes of the United States, to wit, to have his goods appraised.

United States *v.* Lee (106 U. S., 220) is cited with respect to officers and their obedience to law. With that opinion I am in full accord. The conclusion of the majority of the court stands as a monument to the worth and glory of the Supreme Court of our country. It was rendered just after the Civil War, when animosities and prejudices were stalking through the land like a thief in the nighttime. The court restored property to its owner, the keeping of which under the circumstances would have been an everlasting stain upon the patriotism of our people. The question in dispute was the Arlington estate, wherein our Government sought, by ways not at all to its credit, to obtain possession of property that had been in the Custis and Lee family practically since the Revolution. It was shown at the trial that the owners had tendered to the tax commissioner every dollar of taxes, interest, and costs demanded, and yet it was refused. In an action of ejectment for the possession of this old plantation by its then owners, in deciding against the Government and holding the officers had not the power to deprive the owners of the right to redeem their land from taxation, the great Miller, as Justice of the Supreme Court, arose to heights only occupied by a Marshall or a Taney, and enunciated rules so patriotic and

true that his name is imperishably linked with those who laid the foundation of this indissoluble republic.

That case is not in the same category as the question now before this board. Here every form of law has been followed and the citizen accorded every right prescribed by law.

I hold, first, that the certified invoice signed by the British consul under the circumstances shown by this record justified its acceptance by the collector, and, second, that the bond was within the provisions of the statute and its signing by the importer was a waiver of his right to have the value of the merchandise described in the consulated invoice again appraised.

The protest should be dismissed.

(T. D. 35000.)

Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, Somerville, and Hay.

BEFORE BOARD 1, DECEMBER 14, 1914.

No. 37038.—BUTTONS—BEADS—SPANGLES.—Protests 459667, etc., of A. & H. Veith (New York). Opinion by Sullivan, G. A.

Merchandise classified as glass buttons was held dutiable as buttons not specially provided for under paragraph 427, tariff act of 1909, on the authority of United States *v.* Veith (5 Ct. Cust. Appls., —; T. D. 34478). Beads and nail heads were held dutiable as beads or spangles under paragraph 421, tariff act of 1909. Abstract 35260 (T. D. 34321) followed.

No. 37039.—JEWELRY.—Protests 578532, etc., of A. Bader Co. et al. (New York and Burlington). Opinion by Sullivan, G. A.

Cohn *v.* United States (4 Ct. Cust. Appls., 378; T. D. 33536) followed as to articles commonly known as jewelry held dutiable under the last clause of paragraph 448, tariff act of 1909.

No. 37040.—IMITATION PEARL BEADS.—Protests 584682, etc., and 588881, etc., of Abraham & Straus et al., and protests 459412, etc., of M. Gugenheim et al. (New York). Opinions by Sullivan, G. A.

On the authority of Lorsch *v.* United States (5 Ct. Cust. Appls., —; T. D. 34132), imitation pearl beads were held properly classified under paragraph 421, tariff act of 1909.

BEFORE BOARD 2, DECEMBER 14, 1914.

No. 37041.—METAL-COATED PAPER INITIALS.—Protests 748491, etc., of Roberts, Cushman & Co. et al. (New York and Chicago). Opinion by Fischer, G. A.

Initial letters made from metal-coated paper, classified as articles of metal-coated paper under paragraph 324, tariff act of 1913, were claimed dutiable as "papers or cardboard, cut, die cut, or stamped into designs or shapes, such as initials" (par. 332). Protests overruled on the authority of United States *v.* Wyman (4 Ct. Cust. Appls., 411; T. D. 33851).

No. 87042.—JEWELERS' LATHES—MACHINE TOOLS.—Protests 726310, etc., of Hammel, Riglander & Co. (New York). Opinion by Fischer, G. A.

Jewelers' lathes classified as manufactures of metal under paragraph 199, tariff act of 1909, were claimed dutiable as machine tools (par. 197). Protests overruled.

No. 87043.—STRAW SLIPPERS.—Protests 591991, etc., of Wm. A. Brown & Co. (New York). Opinion by Cooper, G. A.

Slippers classified as silk wearing apparal under paragraph 402, tariff act of 1909, and found to be in chief value of straw, were held dutiable under paragraph 463, as claimed. Protests sustained in part.

No. 87044.—DRAWNWORK—FLAX ARTICLES.—Protest 758006 of M. Gardner & Co. (New York). Opinion by Cooper, G. A.

Merchandise classified as drawnwork under paragraph 358, tariff act of 1913, was held dutiable as flax articles (par. 284), as claimed.

BEFORE BOARD 3, DECEMBER 14, 1914.

No. 87045.—QUANTITY OF GOODS.—Protest 748414 of F. B. Vandegrift & Co. (Philadelphia). Opinion by Waite, G. A.

Protest sustained claiming that duty was assessed upon excess goods.

No. 87046.—OIL CAKE.—Protests 728748, etc., of J. Loring & Co. (Boston).

HAY, *General Appraiser:* The merchandise in this case was reported by the appraiser as Bibby's oil-cake feed, assessed under paragraph 385 of the tariff act of 1913, and claimed to be free. The protests were submitted upon the following stipulation:

It is stipulated and agreed that the merchandise herein consists of feed for horses or dairy stock, and that it is composed of the same kind of material as oil cake, and that the official samples correctly represent the goods.

The only claim relied upon by the protestants is that the merchandise is free of duty under paragraph 560 of the tariff act of 1913. This paragraph reads as follows:

Par. 560. Oil cake.

The Government contends that the merchandise, although made of the same material as oil cake, is not a cake as that term is used in the tariff act and in the dictionaries.

Oil cake, we think, is a distinct commodity. It is not always in the form of a cake. It takes the two words "oil" and "cake" together to express the name of the commodity. It is well known, and has in effect received judicial interpretation at the hands of this board. The dictionaries, in defining oil cake, do not speak of it as necessarily in the form of a cake, but in the form of a cake or mass. It is true that this board in Wright's case, G. A. 2977 (T. D. 15953), and in Ruhe et al., G. A. 5628 (T. D. 25167), held that oil cake that had by machinery been ground into a meal was no longer oil cake. This case, however, turned upon the fact that the material in question was distinctively known as cottonseed meal, and the additional fact that the testimony showed that it had been reduced to its present condition by a process of manufacture. The case before us, we think, is controlled by C. D. Bunker & Co.'s case, G. A. 6305 (T. D. 27178), wherein the board held that oil cake crumbled into the form of meal due to exposure, dry climate, jarring in transportation, or other handling, and not as the result of any process to change its form or quality, was still oil cake and free of duty as such. The protests in this case are sustained and the collector directed to reliquidate the entries accordingly, admitting the merchandise free of duty under paragraph 560.

No. 87047.—Iron Drums—American Goods Returned.—Protest 729192 of Strong & Trowbridge Co. (New York). Opinion by Hay, G. A.

Protest sustained claiming free entry under paragraph 404, tariff act of 1913, for iron or steel drums, containers of gasoline.

No. 87048.—Scientific Apparatus.—Protest 745648 of W. H. Allison Co. (Detroit). Opinion by Hay, G. A.

For the reason that the regulations were not complied with, protest was overruled as to certain scientific apparatus claimed free of duty under paragraph 573, tariff act of 1913.

No. 87049.—Wooden Stands for Vases.—Protest 750153 of B. Altman & Co. (New York). Opinion by Hay, G. A.

Wooden stands imported with earthenware vases, classified as entireties under paragraph 80, tariff act of 1913, were claimed dutiable separately. Protest sustained on the authority of Abstract 34727 (T. D. 34165).

No. 87050.—Jewelry Boxes.—Protest 752200 of Gimbel Bros. (New York). Opinion by Hay, G. A.

Small jewelry boxes composed of gallilith and metal, classified under paragraph 448, tariff act of 1909, were held dutiable as manufactures of metal (par. 199).

No. 87051.—Radium and Containers.—Protest 759582 of J. D. Smith & Co. (New York). Opinion by Hay, G. A.

An apparatus for producing emanations of radium, classified as a nonenumerated manufactured article under paragraph 385, tariff act of 1913, was claimed free of duty as radium and the usual containers thereof (par. 585). Protest overruled.

Before Board 1, December 17, 1914.

No. 87052.—Oils—Petitgrain, Sweet Almonds, Peach Kernels—Examiner's Report.—Protest 697024-44364 of Rockhill & Vietor (Chicago).

McClelland, *General Appraiser:* The merchandise involved is referred to in the special report of the appraiser as (1) oil of petitgrain; (2) oil of sweet almonds, imitation; (3) oil of peach kernels.

The collector assessed duty on all these oils at the rate of 25 per cent ad valorem under paragraph 3 of the tariff act of 1909, and free entry is claimed by protestants for each of them under paragraph 639 of said act.

But one sample of these oils was submitted in evidence, the so-called oil of sweet almonds, and this was, on motion of counsel for protestants, referred to the official chemist in the appraiser's office for analysis. That officer reports that the sample "is probably poppy-seed oil containing a very small amount of sesame oil," and that the sesame oil is probably present as an adulterant. Upon this statement, which is not controverted, it is quite apparent that there is no merit in the claim for free entry as to this oil.

In support of the claims made for the so-called petitgrain and peach-kernel oils the examiner of like merchandise at the port of New York was called by protestants' counsel to testify. In the absence of samples of the two last-named oils this witness was asked to testify as to their character and the classifications they should be given from mere invoice descriptions.

As a matter of practice we do not hesitate to at least question the propriety of importers seeking to offset the judgment of an examiner at one port by that of an examiner at another port who passes like merchandise. We can not conceive of anything to be said in favor of such a practice, unless it is expected that the board will assume that the examiner passing the merchandise was less competent than the examiner passing

similar merchandise at the port of New York. If there was any such hope in calling the New York examiner in this case, it was a false one, for the board will presume, in the absence of proof to the contrary, that the officer who passed these oils at the por of entry was equally competent with any other examiner passing like merchandise, either at the port of New York or any other port. The action of every public officer is entitled to that presumption.

The evidence submitted is wholly insufficient to warrant a reversal of the collector's action.

No. 37053.—BLINDS OF WOOD—SHUTTERS—SCREENS.—Protests 710645, etc., of Knauth, Nachod & Kuhne (New York).

McCLELLAND, *General Appraiser:* The merchandise involved is described on the invoices as (1) "blinds" and (2) "wood roller blind about 15 millimeters thick with one coat of paint, mahogany, without air slits, with spring roller," and the appraiser's advisory classification thereof is "blinds of wood, painted." The collector assessed duty at the rate of 40 per cent ad valorem under the provisions of paragraph 214 of the tariff act of 1909, which reads:

Porch and window blinds, baskets, curtains, shades, or screens of bamboo, wood, straw, or compositions of wood * * * if stained, dyed, painted, printed, polished, grained, or creosoted. * * *

The claims in the protests are for a duty of 35 per cent ad valorem, either under paragraph 215 as furniture or manufactures of wood, or the first provision of said paragraph 214.

A representative of the Swedish Venetian Blind Co., for whom the merchandise is imported, stated at the hearing that the articles in question were "roller shutters," painted, used in schools, churches, and hospitals for dividing rooms. They are in chief value of wood and of different sizes.

Webster's Dictionary defines the words "shutter" and "blind":

Shutter.—1. A movable cover or screen for a window, designed to shut out light, to obstruct the view, or to be of some strength as a defense; a blind.

1. *Blind.*—Something to hinder sight or keep out light; a screen; a cover; especially a hinged screen or shutter for a window.

One of the definitions of "screen" given in the Century Dictionary is—

A covered framework, partition, or curtain, either movable or fixed, which serves to protect from the heat of the sun or of a fire, from rain, wind, or cold, * * * or to shelter from observation, conceal, shut off, or secure privacy.

And the latter authority defines the word "shade":

2. To hide; screen; shelter, especially to shelter or screen from injury.

The witness was asked whether the merchandise was sometimes called "screens," and he replied:

Well, there are so many different definitions. People call them venetian blinds, screens, and shades, both of which we hold is a wrong impression.

We are of the opinion that the articles in question may with equal accuracy be called "shutters," "blinds," or "screens" made of wood, painted, and we accordingly hold them to be subject to duty under the provisions of paragraph 214 at the rate assessed.

The decision of the collector is affirmed in each case and the protests are overruled.

No. 37054.—SCREENS.—Protest 756330-52418 of Marshall Field & Co. (Chicago), and protest 762534 of Aimone Manufacturing Co. (New York). Opinions by McClelland, G. A.

Screens in chief value of wood, classified under paragraph 175, tariff act of 1913, were claimed dutiable as house or cabinet furniture (par. 176). Protests overruled on the authority of Morimura *v.* United States (2 Ct. Cust. Appls., 181; T. D. 31941).

No. 87055.—Split Bamboo—Split Palm Leaf.—Protests 704183, etc., of Bow Yuen & Co. et al. (Portland and Seattle). Opinion by McClelland, G. A.

On the authority of G. A. 5315 (T. D. 24332), Abstract 18606 (T. D. 28910), and Abstract 21003 (T. D. 29673), split bamboo, classified under paragraph 215, tariff act of 1909, and split palm leaf, classified under paragraph 212, were held entitled to free entry under paragraphs 713 and 563, respectively.

No. 87056.—Java Hats of Split Bamboo—Chip.—Protests 734015, etc., of Isler & Guye (New York). Opinion by McClelland, G. A.

Men's so-called Java hats, not trimmed or blocked, made of split bamboo, classified under paragraph 335, tariff act of 1913, were claimed dutiable as manufactures of wood (par. 176). Protests overruled.

No. 87057.—Novelty Siding.—Protests 735838, etc., of Maine Central R. R. Co. et al. (Portland, Me., and Burlington). Opinion by McClelland, G. A.

G. A. 7546 (T. D. 34305) followed as to novelty siding classified under paragraph 176, tariff act of 1913, and held entitled to free entry under paragraph 647.

No. 87058.—Spanish Cedar—Cabinet Wood.—Protest 724510 of Porto Rican-American Tobacco Co. (San Juan). Opinion by McClelland, G. A.

Sawed cedar strips, classified as cabinet wood under paragraph 203, tariff act of 1909, were claimed dutiable under paragraph 201. Protests overruled. United States *v.* Owen (4 Ct. Cust. Appls., 480; T. D. 33887) followed.

No. 87059.—Spotted Gum—Ship Timber.—Protests 718181, etc., of White Bros. (San Francisco). Opinion by McClelland, G. A.

Spotted gum imported from Australia, classified as sawed lumber under paragraph 201, tariff act of 1909, was claimed entitled to free entry as ship timber and ship planking (par. 712). It was found to be hardwood, a species of eucalyptus, in lengths and shapes especially adapted for use in shipbuilding, and held entitled to free entry, as claimed. Abstract 25681 (T. D. 31624) followed.

No. 87060.—Nail Powder—Toilet Preparation.—Protests 752509, etc., of Graef Bros. (New York). Opinion by McClelland, G. A.

A perfumed and tinted powder used for polishing finger nails was held properly classified as a toilet preparation under paragraph 48, tariff act of 1913.

No. 87061.—Gas Tubing—Druggists' Sundries.—Protest 760526 of M. J. Corbett & Co. (New York). Opinion by McClelland, G. A.

Protest overruled as to gas tubing classified as druggists' sundries under paragraph 368, tariff act of 1913.

No. 87062.—Zinc Yellow.—Protest 757400 of A. Klipstein & Co. (New York). Opinion by McClelland, G. A.

Zinc yellow classified under paragraph 54, tariff act of 1913, found upon analysis to be zinc and potassium chromates, was held dutiable under paragraph 61, as claimed. Abstract 36769 (T. D. 34871) followed.

No. 87063.—Coal-Tar Preparation.—Protest 764984 of Farbwerke Hoechst Co. (New York). Opinion by McClelland, G. A.

United States *v.* Badische (5 Ct. Cust. Appls., —; T. D. 34400) followed as to coal-tar preparation held dutiable under paragraph 21, tariff act of 1913.

No. 87064.—Card Cloth.—Protest 636110 of Howard Bros. Manufacturing Co. (Boston). Opinion by McClelland, G. A.

Card cloth composed of wool and flax, classified as in chief value of wool under the provisions of paragraph 378, tariff act of 1909, and found to be composed chiefly of flax yarn, was held dutiable as a manufacture of flax under paragraph 358, as claimed.

No. 87065.—Lambskin Gloves.—Protest 734767 of Knauth, Nachod & Kuhne (New York). Opinion by McClelland, G. A.

Protest overruled as to gloves classified as lambskin under paragraphs 363 and 364, tariff act of 1913.

No. 87066.—Dressed Goatskins.—Protests 760546, etc., of Kornbluth & Harris et al. (New York). Opinion by McClelland, G. A.

G. A. 7569 (T. D. 34493) followed as to dressed goatskins.

No. 87067.—Catgut Strings.—Protests 613825, etc., of Hensel, Bruckmann & Lorbacher (New York). Opinion by Sullivan, G. A.

Catgut strings classified under paragraph 467, tariff act of 1909, and reported by the collector to be catgut unmanufactured, were held entitled to free entry under paragraph 529.

No. 87068.—Jewelry—Gold-Foil Figures.—Protest 517378 of American Express Co. (Boston). Opinion by Sullivan, G. A.

Small figures stamped out of gold foil, used for decorations in enameled jewelry, classified as parts of gold jewelry under paragraph 448, tariff act of 1909, were claimed dutiable as manufactures of metal (par. 199). Protest overruled.

No. 87069.—Imitation Jet.—Protest 340214 of Kaufman & Aron (New York). Opinion by Sullivan, G. A.

Hatpins with imitation jet tops, classified under paragraph 100, tariff act of 1897, were held dutiable as manufactures of paste (par. 112). Protest sustained in part. G. A. 6808 (T. D. 29265) followed.

No. 87070.—Imitation Jet—Artificial Flowers.—Protests 479030, etc., of Albert Lorsch & Co. (New York), and protest 361998 of Wilfred Schade & Co. (St. Louis). Opinions by Sullivan, G. A.

United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506) followed as to imitation jet articles, and United States *v.* Edson (5 Ct. Cust. Appls., —; T. D. 34128) followed as to artificial flowers bound together by wire.

No. 87071.—Imitation Precious Stones—Beads.—Protest 626389–41998 of T. Buettner & Co. (Chicago), and protests 610287, etc., of the Attleboro Manufacturing Co., protests 603543, etc., of Wm. E. Flory & Co. et al., and protests 607099, etc., of H. Wolff & Co. et al. (New York). Opinions by Sullivan, G. A.

United States *v.* American Bead Co. (3 Ct. Cust. Appls., 509; T. D. 33166) and Abstracts 26470 and 26497 (T. D. 31851) followed as to imitation precious stones for use in the manufacture of jewelry and beads held dutiable under paragraphs 449 and 421, tariff act of 1909.

No. 87072.—Jewelry.—Protest 553270–39370 of Gage Bros. & Co. and protest 514761–38369 of Sears, Roebuck & Co. (Chicago), protest 732727 of Gimbel Bros. (New York), and protest 729506 of Kohn, Adler & Co. and protest 731642 of John Wanamaker (Philadelphia). Opinions by Sullivan, G. A.

Cohn *v.* United States (4 Ct. Cust. Appls., 378; T. D. 33536) followed as to articles commonly or commercially known as jewelry.

BEFORE BOARD 2, DECEMBER 17, 1914.

No. 87078.—PARTS OF BALL BEARINGS—ALIGNING SEATS—WASHERS.—Protests 733360, etc., of S. K. F. Ball Bearing Co. (New York).

FISCHER, *General Appraiser:* The merchandise in question was invoiced as washers and duty was levied thereon at 35 per cent ad valorem under the provision in paragraph 106 of the act of 1913 for "ball bearings, and roller bearings, of iron or steel or other metal, finished or unfinished, and parts thereof." The importers contend that said articles are properly dutiable either at 20 per cent ad valorem under paragraph 167 of said act as manufactures of metal not specially provided for, or at 5 per cent ad valorem under paragraph 123 of said act as washers. It is further claimed in said protests that, by virtue of the provision in paragraph J of subsection 7 of section 4 of said act, a discount of 5 per cent should have been allowed on all duties properly chargeable against said importations. At the hearing of the protests, however, the only claims urged by the importers were those involving paragraphs 167 and 123, respectively, above referred to

Frederick K. Poor, the sole witness who appeared on behalf of importers, testified that he had sold articles like those here under consideration for upward of four years; that they were known commercially both as aligning washers and as aligning seats; that he had also dealt in ball bearings, and that he considered the same complete without aligning washers or aligning seats. That the sole purpose for which the said aligning washers or aligning seats were designed or intended to be used is to give to the ball bearings a uniform spherical surface, thus distributing the load evenly over the full row of balls in the bearing; that where said aligning washers or seats are not present it is necessary that a seat be machined into the part on which the ball bearings are mounted. He further testified that he had occasionally sold the aligning washers separately from the bearings, and that the former were not considered a part of the latter.

On cross-examination this witness testified that the controverted articles were known in the ball-bearing trade as washers; that they are made with the same curve as the ball race and in 20 different sizes, and that one washer would not accept every bearing with the same degree of success in operation. Such testimony of a single witness, however, is insufficient to prove commercial designation. United States *v.* Oberle (1 Ct. Cust. Appls., 527; T. D. 31545).

The pertinent provision in paragraph 106, under which the articles in question were assessed, reads as follows:

106. * * * Antifriction balls, ball bearings, and roller bearings, of iron or steel or other metal, finished or unfinished, and parts thereof, 35 per centum ad valorem.

And the provision in paragraph 123, which is invoked by the importers, reads as follows:

123. Nuts or nut blanks, and washers, 5 per centum ad valorem. * * *

These aligning washers or seats do not respond to the common and ordinary understanding of the term "washer." We are decidedly of opinion that said articles are plainly parts of ball bearings, having been manufactured and finished to a high degree of perfection for no other purpose than as parts of ball bearings, and that in connection with such use the term "aligning seat" would seem to more correctly and accurately describe the article than would the term "washer."

This view is amply supported by the catalogue submitted in evidence and marked "Exhibit 1" herein. On page 24 thereof, these so-called washers are shown assembled with the other parts of a complete ball bearing, and the following descriptive language accompanies the illustration there printed:

It will be seen from the illustrations herewith that the S. K. F. Double Thrust Bearing is so designed that the central rotating thrust disk, two rows of balls, and *aligning seats* are combined in a single unit within the bearing casing.

We therefore hold that the articles under consideration are unquestionably parts of ball bearings and dutiable accordingly under said paragraph 106, as assessed, and all claims to the contrary alleged in the protests are hereby overruled.

The claim for a 5 per cent discount on the duties collected herein being wholly unsupported by the necessary proof, is likewise overruled. Note G. A. 7540 (T. D. 34246).

No. 87074.—Card Clothing Grinding Machines—Machine Tools.—Protests 691195, etc., of Leigh & Butler (Boston). Opinion by Fischer, G. A.

Dronsfield patent traverse wheel grinders and rollers, adapted and designed for grinding card clothing, to be attached to carding machines furnished with motive power, classified as manufactures of metal under paragraph 199, tariff act of 1909, were held dutiable as machine tools (par. 197). Abstract 27818 (T. D. 32297) followed.

Before Board 3, December 17, 1914.

No. 87075.—Shortage.—Protest 733488 of Wm. H. Horstmann Co. (Philadelphia). Opinion by Waite, G. A.

Protest sustained as to shortage of cotton canvas.

No. 87076.—Panama Canal Act—Outfit and Equipment for Vessels.—Protest 763949 of Fore River Ship Building Corporation (Boston). Opinion by Somerville, G. A.

Tools and appliances used during the installation of the electrical equipment aboard a battleship were claimed entitled to free entry under section 3 of the Panama Canal act (T. D. 32956). Protest overruled.

No. 87077.—Buttons of Glass and Fish Scale.—Protests 696023, etc., of Rothschild Bros. & Co. (New York). Opinion by Somerville, G. A.

Buttons of glass and fish scale were held dutiable as buttons not specially provided for under paragraph 427, tariff act of 1909. Blumenthal *v.* United States (5 Ct. Cust. Appls., —; T. D. 34529) followed.

No. 87078.—Coverings of Liquids and Semiliquids.—Protests 397692, etc., of Guiseppi Adelfio et al. (New York). Opinion by Somerville, G. A.

United States *v.* Peabody (3 Ct. Cust. Appls., 130; T. D. 32383) followed as to coverings of liquids and semiliquids.

(T. D. 35001.)

Agate beads—Button blanks.

American Bead Co. *v.* United States (No. 1341).

Where Two or More Rates of Duty Are Applicable.

The present merchandise before and at the time of the passage of the tariff act of 1909 was known commercially as beads and known also commercially as agate button blanks, and under the testimony it can not be well said that either designation is the more specific. Accordingly, the articles fall within the final clause of paragraph 481 of the act in question, by which they must take the higher rate of duty assessed upon the two classifications.

United States Court of Customs Appeals, December 14, 1914.

APPEAL from Board of United States General Appraisers, Abstract 34844 (T. D. 34201)

[Affirmed.]

Allan R. Brown for appellant.

Bert Hanson, Assistant Attorney General (*Charles D. Lawrence*, special attorney, of counsel), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MARTIN, Judge, delivered the opinion of the court:

The merchandise consists of small rounded disks of commercial agate, white in color, and pierced with a single hole through the center. They were invoiced by the importers as agate beads.

The appraiser reported the articles to be parts of agate buttons, and returned the same for duty as such under paragraph 427 of the tariff act of 1909. They were accordingly assessed with duty under that paragraph.

The importers protested against the assessment, contending that the merchandise was beads and therefore dutiable under the *eo nomine* provision for beads of all kinds contained in paragraph 421 of the same act.

This issue was tried upon evidence before the Board of General Appraisers and the board overruled the protest. The importers now prosecute their appeal from that decision.

The following is a copy of the pertinent parts of the two paragraphs thus relied upon by the respective parties:

421. Beads and spangles of all kinds, including imitation pearl beads, not threaded or strung, or strung loosely on thread for facility in transportation only, thirty-five per centum ad valorem; * * *.

427. Buttons or parts of buttons and button molds or blanks, finished or unfinished, shall pay duty at the following rates, the line-button measure being one-fortieth of one inch, namely: Buttons known commercially as agate buttons, * * * one-twelfth of one cent per line per gross; * * * and in addition thereto, on all the foregoing articles in this paragraph, fifteen per centum ad valorem; * * *.

The issue therefore is whether the importations were dutiable as beads under paragraph 421 or as parts of agate buttons under paragraph 427, both above copied.

It convincingly appears from the testimony that the present articles are simply certain sizes of similar articles made in many different sizes, all of which had been the subjects of importations into this country for more than 30 years next preceding the tariff revision of 1909. During all but the last few years of that period the merchandise figured exclusively in the bead trade, being imported by bead houses only and being known commercially as agate beads. In use the articles were strung upon ornamental strands, either alone or together with beads of other colors and materials. Such strands

were cheap in character, generally selling for 5 or 10 cents apiece in the retail trade.

A few years prior to the tariff revision of 1909 a new use was found for the articles, which speedily became their chief use. By chance it was observed by a button manufacturer that in point of size and form these articles resembled certain button blanks made of pearl, ivory, glass, or other materials, and used as bodies in the manufacture of shanked buttons. Such button blanks were rounded disks like these with single perforations, through which metal shanks could be twisted by machinery, thus converting them into completed buttons. Upon experiment it was found that the present articles were susceptible of the same use by means of the same machinery, thus affording a cheap and suitable body for the manufacture of such buttons. Nor did this appear to be an abnormal or irregular use of the articles in question, for they were exactly suitable therefor in point of size, shape, material, and cost of production. And they were similar in size and shape to button blanks made of other substances for similar use in the manufacture of shanked buttons. Such buttons are largely used as shoe buttons. They are also sewed upon certain kinds of garments, and when made with agate bodies they are of course known commercially as agate buttons They are also made into sleeve and collar links, composed of two buttons held together by metal links.

The history of this development is told by the importers' witness, Harry S. Neumann, whose testimony upon that subject is here copied. The date of his examination as a witness was December 1, 1913. According to his statement the transactions of which he speaks began about seven years before that time, or about the close of 1906, being more than two years before the enactment of the tariff act of 1909.

Q. Are you familiar with the merchandise the subject of this hearing?—A. Yes, sir.

Q. You, I believe, testified that you bought these articles and used them largely in the manufacture of fancy buttons?—A. Yes, sir.

Q. How long is it since you first found that these articles were capable of being used by you in the manufacture of buttons?—A. I should say about seven years.

Q. At that time what was there—a machine developed, or what—that enabled you to make buttons out of these articles?—A. A demand sprang up for a shoe button. We were making them in pearl and we found them rather expensive. The trade wanted something cheaper. I happened to walk by the American Bead Co.'s window on Broadway and saw agate beads in the window. I went into the American Bead Co., whom I had never known before, and asked to see some of those samples. They showed me samples. I took the beads and we went to the factory and took those beads and put them in the same machine that we have to make pearl buttons with a revolving shank on, and they worked satisfactorily.

Q. At that time that you devoted yourself to getting beads for this use, did you not notice at all what the finish on the one side was, whether they were equally finished on both sides, or whether one was rough?—A. One was always rough, because we put the rivets through the well finished side. In other words, the rough was the back.

Q. And these beads bought from the American Bead Co. were bought out of stock?—A. We bought samples out of stock. They only carried a limited quantity.

Q. Subsequent to your development of this use for the article, did you buy from other people? Did you see other people who were the manufacturers of these to see whether the demand for your raw material could be filled?—A. Yes; after buying from the American Bead Co. I went to Europe to one of the syndicates that makes these goods in Austria and I went to Germany and bought them from another manufacturer. We also bought them in France.

Q. How many manufacturers are there of these agate beads in the world that you know of?—A. To my knowledge there are five manufacturers.

Q. And have you bought these articles from all five of them?—A. Well, only four of them make this special class of goods, but we have bought them, I believe, of every one of them.

Q. Have you had samples submitted to you before purchase of their regular agate beads?—A. Well, we simply buy them according to the special sizes.

Q. Before buying, you see their product?—A. Yes, sir.

Q. Were those samples thus submitted finished on both sides or have they all this same defect of having one side finished and one rough side?—A. Always the same; always the same traces of being rough on one side.

Q. Do you know why that peculiarity of having one rough side and one finished side exists in the case of agate beads?—A. I can not tell you exactly why, because it is a secret process of these factories, but I have always noticed that to be the case in these agate beads.

Q. That has been the practice how long?—A. Ever since I have been handling the goods.

Q. For seven years?—A. For seven years.

Q. (By General Appraiser SULLIVAN.) Could they be used as beads or buttons, either one?—A. Of course we have used these things largely as buttons.

Q. (By General Appraiser MCCLELLAND.) You have never been in the bead business?—A. No; simply for buttons.

Q. You have no idea of what is the most specific use, making beads or buttons?—A. Well, they make mostly beads of course, because all the other trades use a great number of these, but I am not in the bead business.

By Mr. LAWRENCE. Q. During the seven years you have handled these agate articles you have used them exclusively in the button trade?—A. Well, we have made various articles out of them, for collar bars and things like that [indicating].

Mr. STRAUSS. The court won't know what you are referring to.

The WITNESS. I will say we have used these things as buttons chiefly.

Q. That is the practical commercial use to which you have devoted them?—A. Yes, sir; the use to which we have devoted them absolutely.

* * * * * * *

Q. What kind of a button do you make principally?—A. Well, shoe buttons; we make all these things into buttons.

Q. What are the buttons that you make used for most generally?—A. To-day they are used chiefly by us for these collar bars for soft collars. In other words we take two of these buttons, and after we make them we put a metal link in between them. They are put in to hold the ends of the soft collar, but in three months from to-day our chief sale may be shoe buttons.

The following extracts from the testimony are given in further explanation of the facts:

F. J. Appelbee:

Q. Based upon your experience is it not true that the merchandise represented by Exhibits 1 and 2 is used chiefly in the manufacture of buttons?—A. Well, at the present time they are used chiefly for the making of those collar links.

Q. Collar links such as you introduced exhibits for?—A. At the present time; yes.

Q. Prior to the present time what have they been used for?—A. For buttons.

Mr. STRAUSS. The collar links is illustrative Exhibit C.

Q. What was the chief use of them at and prior to August, 1909?—A. The chief use then was for buttons.

Q. What kind of buttons?—A. Shoe buttons.

Q. For ladies' shoes particularly?—A. Well, ladies' shoes.

Q. They are still being used for making shoe buttons, aren't they?—A. To some extent.

Q. Are they also used for making buttons for white linen coats, or white coats worn by barbers and others?—A. Yes.

Hugo G. Veith:

Q. Please look at Exhibits 1 and 2 in this case, and tell me how long you have been familiar with merchandise of that character?—A. Over 30 years.

Q. At wholesale?—A. At wholesale.

Q. In the markets of this country?—A. Yes, sir.

Q. During all of that period that you have been familiar with them by what name have they been bought and sold in the markets of this country?—A. They have been imported and known in trade and commerce as beads.

Q. And has that been true during all the period that you have dealt in them?—A. Yes, sir.

Q. Have they been bought and sold as beads?—A. Yes, sir.

Mortimer Hyman:

Q. When beads are used for bead necklaces or trimmings they are used in their naked condition as they appear here, aren't they?—A. Yes, sir.

Q. Then you spoke of their possibly being utilized for some other purpose?—A. Yes.

Q. For instance, what other purpose?—A. They make buttons out of them.

Q. When they make buttons out of them they entirely change the nature of the bead, don't they?—A. By putting a shank and turning it into a button, which can be done with almost any bead—any bead.

Q. These articles are commonly used for making buttons, are they not?—A. They are now; yes, sir.

Q. That is probably the greatest use for them at the present time?—A. Yes, sir.

Q. Has that been true for about five years?—A. I don't know whether it is that length of time; I don't think it is more than two or three years to my knowledge.

Q. Is there any doubt in your mind that that is the chief use of these articles to-day?—A. At the present time, yes, I think its chief use is buttons.

Louis Rosenberg:

Q. State whether Exhibit 1 in question, samples that you have produced, were within or without the meaning of the term bead as used by your trade at the time stated?—A. Unquestionably beads.

Q. Has that always been true?—A. Yes, sir.

* * * * * * *

Q. Are you familiar with the use of these articles to-day, having reference to the articles in dispute; these agate pieces?—A. Yes.

Q. Do you know what they are chiefly used for at the present time?—A. There are two sizes specially imported for buttons—two or three sizes.

Q. And this particular size is one of them?—A. Yes, sir.

Q. This Exhibit 1?—A. Yes, sir.

Solomon B. Mendel:

Q. What is their chief use?—A. Exhibit 1 has been used almost exclusively for shoe buttons.

* * * * * * *

Q. Now, will you please tell me what the wholesale trade and commerce of this country—not the manufacturers, but the buyers and sellers—call the button blank?—A. Partly finished button.

Q. Any partly finished button?—A. I think so.

Q. Any material that can be possibly used in a button is called a button blank?—A. I think so, used for button purposes.

Q. Anything used for button purposes?—A. Yes.

Q. Then your inclusion of Exhibits 1 and 2 is based upon the fact that you know it can be used for button purposes?—A. Exactly.

Charles Blakeman:

Q. Having in mind, Mr. Blakeman, the trade meaning of the term "button blanks" at and prior to August, 1909, state whether its meaning would include merchandise like Exhibits 1 and 2.

Mr. STRAUSS. Objected to on the ground that it is incompetent, irrelevant, and immaterial, and the witness is not shown to be competent to answer, and sufficient foundation has not been laid. Objection overruled.

Mr. STRAUSS. Exception.

Last question read.

A. They have always been known as the same prior to 1909 as they would be up to to-day, ever since I can remember.

Q. Would they be included in the trade term "button blanks"?—A. Yes; they certainly would.

Q. Now, what is there, Mr. Blakeman, about the exhibits which enables you to identify them as button blanks?—A. Well, the shape and form, and everything else. If we manufacture a shoe button we have got to make it in that shape before we can put our shank in it, and consequently it is always known as a blank, and it is known until it is finished up.

* * * * * * *

Q. Is it a usual thing for a pearl button blank to have the shape of Exhibits 1 and 2 before you?—A. Well, we have got to put it in that shape before we can sell it for a button.

Q. I am talking now not about the button, but the button blank that you have been saying you bought and in some measure have sold. It is not in the shape of Exhibits 1 and 2?—A. I have blanks exactly the same in pearl.

C. H. Putnam:

Q. Confining yourself to the term "button blanks," was the meaning of that term definite, uniform, and general?—A. It is a uniform expression.

Q. (By General Appraiser McCLELLAND.) What did it mean?—A. It meant a blank. It meant partly a button.

Q. Describe it.—A. Well, it is a partly finished button. In other words it has all the finishes, except just a touch. It might need a hole or a little brad or a little finish on the face. It may just need a little work to finish it as a button.

* * * * * * *

Q. (By General Appraiser McCLELLAND.) Having in mind the form and general appearance of Exhibits 1 and 2, regardless of the material from which they are made, would they, or would they not have been included within the term "button blanks" prior to August 5, 1909?

Mr. STRAUSS. I object to your honor's question.
Objection overruled.
Mr. STRAUSS. Exception.
The WITNESS. They would be included as button blanks.

While the testimony as a whole is not free from contradictions, it may nevertheless fairly be concluded therefrom that for several years prior to the revision of 1909 the present merchandise continued to be bought and sold by bead merchants and to be commercially known as beads in that branch of trade and commerce, but that nevertheless during the same period the chief use of the merchandise in this country was in the manufacture of agate buttons, and among merchants dealing in button supplies these articles were commercially known as agate button blanks. This condition also obtained at the time of the present importations.

It thus appears that the history of such importations naturally falls into two parts, and it may be noted that the procedure at the customhouse changed with the changing use of the article. For many years such articles were regularly classified as beads and were so assessed; but afterwards, under instructions, the appraisers returned the same as agate button blanks or parts and they were assessed as such. But during the entire period there were also continuous importations into this country of buttons which were made of the same material as these, but which were pierced with two or more eyes for use in sewing the same upon garments. It is conceded that such buttons were all the time commercially known as agate buttons and that they were always assessed as such under the *eo nomine* provision for agate buttons. The importers claim that the buttons just described are the only ones which were ever within the purview of the agate-button classification of the several tariff enactments, whereas the Government contends that the present articles should be classified as agate-button blanks since they are the finished bodies of which agate buttons of a certain kind are made.

According to the recitals above appearing it seems that the commercial designation of the present article is so divided as to be no longer general, uniform, and definite and that the article itself under the circumstances would actually and properly bear both names alike, being at the same time an agate bead and an agate-button blank. This being the case a question at once arises concerning the relative degrees of specificity of these competing classifications. A consideration of this question leads to no satisfactory conclusion. It may be said with equal propriety that the articles in question are beads which form only a kind or species of button blanks, or that they are button blanks which form only a kind or species of beads. Either term may thus be accepted as the species of which the other thereupon becomes the genus, and upon the whole it can not be said rightfully that either designation is in fact more specific than the

other. In this situation the merchandise seems to fall within the final clause of paragraph 481 of the tariff act of 1909, which reads as follows:

If two or more rates of duty shall be applicable to any imported article, it shall pay duty at the highest of such rates.

According to this rule the merchandise should bear the higher rate of duty imposed upon the two classifications within which it falls. Inasmuch as this result has been reached by the present assessment the decision of the board sustaining the same is *affirmed*.

(T. D. 35002.)

Frozen wheat.

SCHADE & CO. *v.* UNITED STATES (No. 1404).

1. WHEAT.

"Wheat" is used in the tariff act of 1909 without limitation or qualification, and in the absence of a contrary commercial custom must be applied to every kind and class of merchandise embraced in the term.

2. WHEAT, "NO GRADE."

This importation was of frozen Manitoba wheat. Even if it be assumed that no commercial designation was shown, and that the merchandise here was improperly classed as "no grade," the record and the samples clearly establish that the common, ordinary designation of "wheat" applies, and this is so, though the wheat was confessedly of inferior quality, suitable alone for animal food.

United States Court of Customs Appeals, December 14, 1914.

APPEAL from Board of United States General Appraisers, G. A. 7552 (T. D. 34353).

[Affirmed.]

Ralph Pierson for appellants.

Bert Hanson, Assistant Attorney General (*Charles E. McNabb*, assistant attorney, of counsel; *Charles D. Lawrence*, special attorney, on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

DE VRIES, Judge, delivered the opinion of the court:

This appeal relates to the proper dutiable classification of a quantity of merchandise originating from Manitoba, Canada, and entered at the port of Chicago. It was there classified and assessed for duty as "wheat" under the provisions of paragraph 242 of the tariff act of August 5, 1909, which reads:

242. Wheat, twenty-five cents per bushel.

The importer protested, claiming the merchandise properly dutiable as an unenumerated unmanufactured article under the provisions of paragraph 480 of the act. On appeal to the Board of General Appraisers the decision of the collector of customs at the port of Chicago was affirmed, and this appeal, therefore, brought here by

the importers, involves solely the determination of the question whether or not the imported merchandise is "wheat" within that term as used in paragraph 242 of the said act.

Great diligence has been displayed by appellants' counsel in the collection of certificates and testimony of persons, official and otherwise, as to what constitutes wheat. This evidence is directed rather to the establishment of the different grades of wheat and their uses than to proof of a trade term within which the merchandise is included, or from which it is excluded by the general and uniform understanding of the trade and commerce of the United States. It is a matter of trade classification rather than of designation. In view of the industry displayed by importers' counsel in the collection of this evidence and his urgent insistence that his protest is well made and that the board erred we will with a degree of detail recite what we regard the more important parts of the material evidentiary facts in the case. We repeat, for the purpose of emphasis and that it may be constantly borne in mind in the consideration of the testimony offered, that the sole question in the case is whether or not the imported merchandise is wheat? The term is used in the tariff law without limitation, and, therefore, the court is bound to hold included therewithin for dutiable classification in the absence of an established trade usage every kind and description of wheat. It is a general term, and the rule long established in tariff interpretation is that where a general term is used in the law without qualification it must, in the absence of a contrary commercial custom, be applied in its broadest significance, including every kind and class of merchandise properly referable thereto, either directly or as a species the genus of which is embraced within the particular tariff nomenclature. United States *v.* Wells, Fargo & Co. (1 Ct. Cust. Appls., 158; T. D. 31211); United States *v.* Salomon (1 Ct. Cust. Appls., 246; T. D. 31277); Schoellkopf, Hartford & MacLagan (Ltd.) *v.* United States (71 Fed., 694).

Historically it seems that during the year in which this merchandise was grown the wheat crop in the Province of Manitoba, Canada, was extraordinarily large and the year excessively wet, so that great difficulty was experienced by the farmers in saving the crop. It is recited in the testimony that much of it was left in the shock all winter and some thrashed on the ground. Additional difficulty was encountered in that the railroads were unable to handle the crop on account of its abundance and the scarcity of labor, so that much of it when shipped was in transit for two or three months, and consequently a large percentage spoiled in transit. The wheat crop, therefore, of that Province and others similarly situated during that year was largely of the same class. This importation was a part of that crop. It originated in Manitoba Province, Canada, and

was billed from Fort William, Ontario, destined for South Chicago via steamer *A. G. Brower*.

By the consular invoice, which arrived in Chicago after entry by pro forma invoice, the merchandise is described as 84,045 bushels of "no grade feed wheat, tough." Upon arrival at the port of Chicago it was entered under oath without certified invoice by W. C. Frost as attorney in fact. The application describes the merchandise as "feed wheat, tough, no grade," and was made on May 15, 1912. The entry for immediate consumption, made on the same day, by the same attorney in fact, is so mutilated by interlineations that without explanation the names designated can not be assumed.

At the time of exportation, when the merchandise was, before being loaded, at Fort William, Canada, it was inspected and classified by the official inspector of grain for the division of Manitoba, Canada. It is described in his certificates as "Manitoba wheat, no grade, tough," "feed," and further classified as "*commercial grade*." Upon arrival at the port of destination and being duly submitted to the appraiser at the port of Chicago by the collector for appraisement, the latter official submitted samples to the Illinois State grain inspection department. These certificates introduced into the record designate it as "sample grade spring wheat." It was also by sample submitted by the appraiser to two seed houses in Chicago, one of which certified that it showed a test of 36 per cent germination and the other 34 per cent. A sample submitted to the Department of Agriculture at Washington returned germination 51.5 per cent. The appraiser's return, which is before us, recites that the Illinois State grain inspection department returned and graded the article as "sample grade wheat, weighing 47 pounds to the bushel, moisture test, 18.10."

At the hearings before the Board of General Appraisers several witnesses testified. The efforts of counsel for the importers seem to have been to establish that the imported merchandise was not fit for the purposes of making flour or for seed, and that it was not one of the recognized grades of wheat such as is classed in the wheat trade of the United States.

While it may be true that the importation was not commercially suitable for the making of flour or for seed, we think that those facts do not exclude it from classification as wheat as that term is used in the tariff act. Such testimony only establishes its classification in two of the several well-known uses of wheat. This assumption, however, does not presuppose that such unfitness was entirely established by this record. The samples of the merchandise submitted to the Department of Agriculture at Washington, D. C., for tests in this particular were returned as producing an expansion of flour of about 60 per cent of the standard and a loaf of bread of about two-

thirds of the standard, which was very coarse grained and of a very dark grayish-brown color. The crumb was somewhat sticky, the odor and flavor not unpleasant. It could be fairly said to be only of exceptional use as flour.

Upon the contention that this importation was not within the recognized trade grades of wheat several witnesses testified that different grades of wheat were recognized in the grain markets of different States of the Middle West. No one of them save Mr. R. J. Henderson was called upon to give an enumeration of these grades. This witness seems to have been well qualified in so far as his testimony went. He had been engaged in handling wheat about 28 years, the greater portion of that time in the part stated of the United States and a part of the time in Canada. He gave the grades as No. 1, hard; No. 1 Northern, No. 2 Northern, No. 3 Northern, No. 4 Northern, rejected, and no grade—seven grades. He confined these grades to spring wheat. He stated that No. 4 grade was put in in recent years, but all the others were of long standing, and that the grades were created by the "Board of Warehouse Commissioners," a State board of the State of Minnesota generally recognized by the buyers and sellers as were similar grades in other States differing possibly in name only and not in application.

The controverted point in the case was whether or not "no grade," which seems of uniform use at least in the Middle West of this country and in Canada, expressed a grade of wheat or a limit beyond which the article ceased to be wheat commercially. Upon this Mr. Henderson, who was the importers' witness, testified:

Q. My point is this: Is the wheat designated as "no grade" wheat recognized in the trade as one of the grades of wheat?—A. Yes, sir.

He further delineated a difference in that the grades to and including No. 4 were ofttimes bought and sold in the markets by grade alone without sample, but that after or below that point wheat graded as "rejected" and "no grade" was bought only on sample. With such there must always be a sample. Nevertheless the testimony of this witness, which is the clearest upon the subject in this record and which is not contradicted but rather confirmed by the testimony of the other witnesses, seems to establish that "no grade" is a grade of wheat, though of inferior quality, which can be sold upon sample only and not according to grade without sample, as is the case with all the other grades except "rejected."

Mr. John Johnson was also called upon the part of appellants. Mr. Johnson is grain inspector for the Illinois Grain Inspection Department and had inspected the particular importation and made the reports in question. He testified:

Q. (By Mr. PIERSON.) Please state what this consisted of.—A. Badly frosted wheat, and under our ruling grain of that kind should be made nothing but sample grade.

Q. By the term "sample grade" you could include any wheat, no matter how badly damaged, which is above that, that takes the grade of "no grade wheat"?—A. Wheat that can not be graded; anything is graded "sample" wheat by our department.

* * * * * * *

Q. When you said that this wheat was badly damaged did you mean anything more than frosted?—A. That is all that is necessary. We have to state whether that car had such and such a thing. Our ruling "badly damaged" would come in "sample grade."

Having testified as to his initials upon certain certificates the following was elicited:

Q. What do the initials "SG" indicate?—A. Sample grade.

Q. And that means what?—A. Sample grade wheat is wheat that can not be graded.

Reading this testimony in the light of its inherent probabilities and in conjunction with the testimony of Mr. R. J. Henderson some light is thrown upon the actual situation. Sample grade and no grade wheat is wheat that can not be further graded than to be classed under the general designation "no grade" or "sample grade." It is called "sample" grade undoubtedly because a grade that by reason of the great varieties included has to be sold by sample only and not by grade. It is, nevertheless, a grade of wheat of this broad inclusiveness, and so recognized in the wheat trade in the localities stated.

This seems to accord also with the Canadian practice, for be it remembered that the inspector of grain for the division of Manitoba, whence this importation originated, classed it as "Manitoba wheat, no grade, tough," and further added "feed" and "*commercial grade*" in his certificates.

So that assuming that the testimony in this record, which was confined to the trade classifications of three Middle Western States and Canada, established prima facie a general uniform classification throughout the United States, we think this importation nevertheless falls within one of those grades known as the "no grade" or "sample grade" of wheat, a grade of such great range that it is bought and sold in the wheat markets by sample only for certainty but nevertheless as wheat.

In the other view, and assuming that no commercial designation or classification was established, it seems too obvious for discussion after reading this record and examining the sample in the case that this merchandise falls within the common ordinary designation of "wheat," though of an inferior quality and probably suitable for stock or chicken feeding purposes only.

After a careful review of all the testimony in this case, commencing with the designation of this merchandise as "wheat" in the consular invoice, followed by that in the oath to enter without certified invoice, and in all of the official certificates made by the officials examining the same, and by every witness who testified in the case, and finally being included as a grade of wheat known as "no grade" and "sample grade," we are satisfied that, though inferior, it is within the

tariff designation "wheat," whether as classed by any wheat trade or the general scope of that word. It may not be suitable for flour, and it may not be suitable for seed, but it undoubtedly falls within that large class of imported grains known as "feed." The market quotations of grain coming under the observation of all familiar therewith in this country are in many instances divided into two classes, (1) milling and shipping and (2) feed. The former by no means includes all of the wheat of commerce. There is no limitation or exposition in the testimony upon the character of feed wheat. None of the witnesses called dealt in that line of wheat, though one, Mr. Charles F. Sparks, for the importers, having examined a sample of this merchandise, stated:

> I am more or less familiar with *feed wheats* offered in the markets. (Record, p. 18.)

The witnesses adduced were not such as dealt in feed wheat, and none was introduced nor was any testimony offered to show this merchandise not included within that designation by dealers in feed grains. It is a matter of common understanding, however, that much wheat is used for feeding stock and other than human animals, and the above is prima facie proof in this record of markets for such, were such proof needed in addition to the common knowledge of all. It is conceded in this record by the importers and the purchasers of this grain that it was actually used for making chicken feed and that it was suitable for that purpose.

We are, therefore, of the opinion that the decision of the Board of General Appraisers should be, and is, *affirmed*.

(T. D. 35003).

Jewelry.

KRAEMER & CO. *v.* UNITED STATES (No. 1411).

NECKLACES—JEWELRY.

Jewelry requires work in metal and a metal neck chain with a clasp constitutes jewelry or parts of jewelry. United States *v.* Goldberg (3 Ct. Cust. Appls., 282; T. D. 32573). Metal appears here in the clasps designed to constitute the article a necklace when completed. They are sold to jewelers and are apparently as susceptible of use on necklaces of metal as of beads.

United States Court of Customs Appeals, December 14, 1914.

APPEAL from Board of United States General Appraisers, Abstract 35398 (T. D. 34398).

[Affirmed.]

Allan R. Brown for appellants.

Bert Hanson, Assistant Attorney General (*Charles E. McNabb*, assistant attorney, of counsel), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

This is an appeal from a decision of the Board of General Appraisers sustaining a classification as parts of jewelry under paragraph 448 of

the tariff act of 1909 of articles described as plain brass snaps with ring or ball at the ends to which to attach a cord; necklace clasps in the form of a bead and evidently intended for bead necklaces; and jet colored clasps.

The articles are claimed to be dutiable as articles or wares composed wholly or in part of metal at 45 per cent ad valorem under paragraph 199.

The board predicated its decision upon Cohn *v.* United States (4 Ct. Cust. Appls., 378; T. D. 33536). As pointed out in the brief of the appellant, the determination in that case was made upon a concession of counsel that the articles in question were properly classificable as jewelry.

The case in this court nearest in point is that of United States *v.* Goldberg (3 Ct. Cust. Appls., 282; T. D. 32573), to which reference will be made later. There are cases cited in which it has been held that beads adapted for use as strings of beads are not articles of jewelry. See American Bead Co. *v.* United States (3 Ct. Cust. Appls., 509; T. D. 33166).

In the case of United States *v.* Goldberg, *supra,* it was held that a metal neck chain is jewelry, and that a clasp therefor is a part thereof, and that within common knowledge and judicial cognizance these articles are jewelry or parts of jewelry. That case rules the present case unless we distinguish between metal necklaces and bead necklaces.

The fact that strings of beads are not dutiable as jewelry does not mark a distinction between manufactured bead necklaces and metal necklaces. A distinction was noted in United States *v.* Hawaii and South Seas Co. (T. D. 26778) between strings of shells and manufactured necklaces, and we think such a distinction is sound. Jewelry was originally the work of a jeweler. It required work in metal, and yet the product of the jeweler's art was not necessarily wholly of metal. Cheaper jewelry has come to be manufactured almost entirely by machinery, but the necessity of the presence of some form of wrought metal to constitute it jewelry still exists, and such wrought metal appears in the present case. It consists of the clasps which are designed to constitute the article when completed a necklace. The fact that the articles are cheap does not prevent their classification as jewelry. The testimony in the present case shows that these articles, of a little more expensive class, are sold to jewelers, and they are apparently as susceptible of use on necklaces of metal as of beads.

It is claimed that certain of the clasps, jet colored, are dutiable as jet. Unfortunately the sample has in some way disappeared, and the evidence fails to distinguish between these articles and the other exhibits in the case.

Decision *affirmed.*

(T. D. 35004.)

Heated wheat.

ATWOOD-STONE CO. *v.* UNITED STATES (No. 1414).

STORED WHEAT, "BIN BURNED."

This wheat was stored in a damp condition and it heated and fermented and became "bin burned." To prevent further deterioration it was subjected to a process of dry heating. Notwithstanding the commodity had been "bin burned" and "dry heated" it remained essentially wheat and was bought and sold as wheat.—United States *v.* Devereux (135 Fed., 428) and Malouf *v.* United States (1 Ct. Cust. Appls., 437; T. D. 31502) distinguished.

United States Court of Customs Appeals, December 14, 1914.

APPEAL from Board of United States General Appraisers, Abstract 35531 (T. D. 34440).

[Affirmed.]

Cassaday, Butler, Lamb & Foster for appellant.

Bert Hanson, Assistant Attorney General (*Charles D. Lawrence*, special attorney, of counsel), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the court:

Merchandise invoiced as feed or condemned wheat and imported into the United States from Fort William, Canada, was classified as wheat by the collector of customs for the district of Superior, Wis., and assessed for duty at 25 cents per bushel under the provisions of paragraph 242 of the tariff act of 1909, which paragraph is as follows:

242. Wheat, twenty-five cents per bushel.

The importers protested that the importation was not wheat, but a nonenumerated unmanufactured article dutiable at 10 per cent ad valorem under that part of paragraph 480 of said act, which reads as follows:

480. That there shall be levied, collected, and paid on the importation of all raw or unmanufactured articles, not enumerated or provided for in this section, a duty of ten per centum ad valorem, * * *.

The Board of General Appraisers overruled the protest and the importers appealed.

The testimony submitted to the board by the importer was to the effect that the product under consideration was wheat which had been "bin burned" by reason of the fact that it had been stored in a damp condition. Stored in that state a heating or fermentation of the wheat set in, which shriveled the grain and gave it an unpleasant odor. To prevent further deterioration the product was then subjected to a process of dry heating, which apparently removed the odor and not only checked the fermentation but precluded its recrudescence. The "bin burning" of the wheat and the process-

ing to which it was submitted discolored the grains, made them useless for the manufacture of white flour or of any flour which would raise, and reduced the value of the article from about 80 cents a bushel to 50 cents a bushel. With the exception that the grains were slightly shriveled, they retained, however, the characteristic form and all the physical constituents peculiar to wheat. Some of the corporeal elements of the cereal were unquestionably impaired by storing it while damp. The germinating principle in a large percentage of the grains and the elastic entangling characteristics of the gluten were certainly destroyed by the dry-heat treatment to which the product was subjected in order to stop fermentation. Nevertheless, the impairment of the physical components of the wheat and the destruction of the principle which made it available as seed affected the quality, not the essence, of the article, and it can not be said that either factor or both together destroyed the wheat or evolved something new which was not wheat. So far as we can discover from the testimony and from the evidence afforded by the samples, the commodity, notwithstanding that it had been "bin burned" and "dry heated," was still wheat, had a marketable value as wheat, and was bought and sold as wheat. True, it was called feed or condemned wheat, but that designation indicated a grade of wheat rather than an entity or substance which was not wheat, as is shown by the testimony of H. G. Atwood, president of the American Milling Co., Carl S. Miner, and W. A. Scott, witnesses for the importers, who testified as follows:

H. G. Atwood:

Q. You don't mean to say that there is no wheat but the milling wheat?—A. Milling wheat, condemned wheat, feed wheat.

Carl S. Miner:

Q. (By Mr. WEMPLE.) You call this wheat, don't you?—A. Yes, sir, I call it wheat; I call it feed wheat.

W. A. Scott:

Q. What is it fit for?—A. It is feed wheat, just the same as feed barley. It is damaged wheat.

Q. What do you mean by feed wheat?—A. Feed wheats are all wheats that are not fit to be manufactured into flour. Marketable wheat, not fit for flour.

To support their contention that the merchandise is not wheat the importer cites Abstract 19941 (T. D. 29339), United States *v.* Devereux (135 Fed., 428), and Malouf *v.* United States (1 Ct. Cust. Appls., 437; T. D. 31502).

In the first two cases it was apparently held that a commodity invoiced as feed screenings in the one case and wheat screenings in the other, and which was worthless for seeding or for the manufacture of human food could not be classified as wheat. Without passing upon the soundness or unsoundness of that rule, it is sufficient

to say that it has no applicability to the goods involved in this appeal, for the reason that it affirmatively appeared from the evidence that from 12 to 20 per cent of the importation still retained the power of germinating, and there was no testimony from which it could be fairly concluded that the importation might not be used for the making of some kind of breadstuffs. The discoloration of the grains and the impairment of the gluten certainly did preclude its use for the manufacture of a white flour which would "raise," but from the fact that it was not available for the manufacture of such a flour it can not be deduced that it was unavailable for the production of breadstuffs similar to those which are made from cornmeal, rye, oats, or barley. The term "bread" is not confined to those breadstuffs which are made from white flour or from flour which will "raise," but is broad enough to cover all articles of food made from the flour or meal of grain, whether it will "raise" or not.

The merchandise which was the subject of controversy in the case of Malouf *v.* United States was not at all of the same character as that here involved. The merchandise there involved was really a manufacture of wheat, produced by boiling, drying, and grinding the grain. That treatment, as appears from the decision, not only destroyed the form but eliminated the bran and enveloping tissues which are characteristic of wheat. So much was the original material modified by the process of manufacture to which it was subjected that, as was said in that decision, it no more produced the "impression or mental picture of wheat than would crushed amber."

In our opinion the merchandise imported is an inferior grade of wheat, and of the issue here involved we can say with confidence what was said by Judge Lochren in the Devereux case:

> The single question is whether this article is wheat. No distinction as to grades of wheat, is made by the tariff. A sample of the article shows the grains of which it is composed, and any person looking at such sample would unhesitatingly pronounce it to be wheat, somewhat injured.

The decision of the Board of General Appraisers is *affirmed.*

(T. D. 35005.)

Iron pile protectors.

UNITED STATES *v.* AMERICAN RAILROAD CO. OF PORTO RICO (No. 1434).

ADVANCEMENT IN THE COURSE OF MANUFACTURE.

The importation was of pile protectors made of sectional, semicircular iron plates, which when riveted together took a drum shape. As to the point whether the holes in the plates were punched before or after rolling, the testimony is distinct that they were punched after rolling. This constitutes an advancement in the course of manufacture beyond hammering, rolling, or casting, resulting in changing the crude article into a form ready for actual use. The merchandise was properly assessed under paragraph 199, tariff act of 1909, as manufactures of iron not specially provided for.

United States Court of Customs Appeals, December 14, 1914.

APPEAL from Board of United States General Appraisers, Abstract 35945 (T. D. 34571).

[Reversed.]

Bert Hanson, Assistant Attorney General (*Charles E. McNabb*, assistant attorney, of counsel; *Frank P. Wilson*, special attorney, on the brief), for the United States.

Jules Chopak, jr., for appellee.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

This case involves two importations of like character. The importations consist of pile protectors, each protector being composed of eight sections, each section of two semicircular iron plates one-fourth of an inch thick, which when riveted together make a drum about 5 feet in diameter and 5 feet in height. Duty was assessed upon each importation at the rate of 45 per cent ad valorem under paragraph 199 of the tariff act of 1909 as manufactures of iron not specially provided for. The protest claims that the merchandise is dutiable at four-tenths of a cent per pound under paragraph 121 of the act of 1909. For convenience, these two paragraphs are here quoted:

199. Articles or wares not specially provided for in this section, composed wholly or in part of iron, steel, lead, copper, nickel, pewter, zinc, gold, silver, platinum, aluminum, or other metal, and whether partly or wholly manufactured, forty-five per centum ad valorem.

121. Beams, girders, joists, angles, channels, car-truck channels, T T, columns and posts or parts or sections of columns and posts, deck and bulb beams, and building forms, together with all other structural shapes of iron or steel, not assembled, or manufactured, or advanced beyond hammering, rolling, or casting, valued at nine-tenths of one cent per pound or less, three-tenths of one cent per pound; valued above nine-tenths of one cent per pound, four-tenths of one cent per pound.

The testimony as to the method of manufacture of these pile protectors was taken by deposition and consists of the testimony of a single witness, Leon Brulé. He testified that the firm with which he is connected manufactured the goods in question. When asked to state the processes of manufacture, he said that the plates were traced exactly to dimensions given, then sheared; the stretching irons were then used after the plates were heated, the plates were then laid out for the purpose of marking the rivet holes, these holes were then punched, and then the plates were rolled by the machine. After these different operations, the plates forming the cylindrical sections were assembled together to assure the agreement of these holes. On cross-examination he was asked:

Q. Were the rivet holes punched or were they drilled?—A. They were punched.

Q. Were the rivet holes produced after the plates or other pieces had been formed by hammering, rolling, or casting?—A. The holes were punched after rolling.

Q. Is it not true that every article or piece of metal in the importations was treated before importation with some operation other than that of hammering, rolling, or casting?—A. Yes, the work of punching the holes was as indicated in the fifth question and then the plates were rolled by the machine.

This testimony is seemingly self-contradictory, but this contradiction may be owing to an error in translation, as it appears that the testimony was taken and answers were given in French, and translation afterwards furnished by the importers. It might well be that there was error in translating the statement, as to the sequence with which the work was done, in the answer to the direct interrogatory, and in answer to the later cross-interrogatory. But the fact remains that when the question was put directly to the witness as to whether the holes were produced after the plates had been formed by hammering, rolling, or casting, the answer is distinct that they were punched after rolling.

The case then presents the single question as to whether the punching of these holes is an advancement in the course of manufacture beyond hammering, rolling, or casting. We think it must be said that it is a further process of manufacture after the rolling process. It results in making out of a crude article the form ready for actual use. Nothing remained to be done except to put the parts together at the place of destination, they having been in fact assembled, according to the testimony of the witness, at the place of manufacture to assure the agreement of the holes. It is true that they must then be riveted to complete the article, but to say that they are not advanced beyond the hammering process is to ignore the important fact of the punching of the rivet holes.

We held in the recent case of Kuyper *v.* United States (5 Ct. Cust. Appls. —; T. D. 34253) that paragraph 121 was intended to cover a class of merchandise of a cruder form and ordinarily advanced to a less degree of manufacture and completeness than paragraph 131, and that paragraph 121 enumerates as dutiable articles which have been subjected to the more common processes of hammering, rolling, or casting. It is true the precise question here involved was not there discussed, but the case is authority to the point that paragraph 121 was intended to define only crude articles and the distinct restriction that such articles should not be advanced in condition beyond hammering, rolling, or casting would seem to place a limitation, which has been exceeded in this case by the process of punching rivet holes.

A similar question was before the board in T. D. 31180. There the merchandise consisted of railroad ties of steel cut the proper length, with bolt holes punched in each end. They were claimed to be dutiable under paragraph 131 of the act, which covers a variety of articles, including steel "pressed, sheared, or stamped shapes

not advanced in value or condition by any process or operation subsequent to the process of stamping," and concluding with a provision for steel not specially provided for. The board held, in effect, that this provision for steel not specially provided for had relation to the unfinished forms of steel of like character as those previously mentioned as "material," and that the articles there in question were completed articles to be bolted together and that they were advanced beyond the condition provided for by paragraph 131.

As to what amounts to an advance in condition of an article beyond the crude state, see United States *v.* Richter (2 Ct. Cust. Appls., 167; T. D. 31680), United States *v.* Westrumite Co. (1 Ct. Cust. Appls., 400; T. D. 31480), and Birtwell *v.* Saltonstall (39 Fed., 384).

The board in the present case sustained the protest. We think this was error. The decision is *reversed* and the assessment sustained.

(T. D. 35006.)

Emergency revenue law—Stamp tax.

Warehouse and rewarehouse withdrawals for transportation to a bonded manufacturing warehouse and withdrawals for transportation and exportation from a bonded manufacturing warehouse not subject to tax under the act of October 22, 1914.

TREASURY DEPARTMENT, *December 21, 1914.*

SIR: Referring to your letter of the 27th ultimo, I have to advise you that, under a ruling of the Commissioner of Internal Revenue, warehouse and rewarehouse withdrawals for transportation to a bonded manufacturing warehouse and withdrawals for transportation and exportation from a bonded manufacturing warehouse are not subject to tax under the act of October 22, 1914. * * *

Respectfully, ANDREW J. PETERS,
(103103.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Norfolk, Va.*

(T. D. 35007.)

Emergency revenue law—Stamp tax—Withdrawals for transportation and exportation and bonds therefor.

Withdrawals for transportation and exportation and bonds given therefor not subject to tax under the act of October 22, 1914.

TREASURY DEPARTMENT, *December 21, 1914.*

SIR: Referring further to your telegram of the 4th instant, I have to state that, under a ruling of the Commissioner of Internal Revenue,

withdrawals for transportation and exportation and bonds given therefor are not subject to tax under the act of October 22, 1914.

Respectfully, ANDREW J. PETERS,
(103103.) *Assistant Secretary.*

Mr. WILLIAM G. JUNOD, *Kansas City, Mo.*

(T. D. 35008.)

Drawback on tools.

Drawback on air drills, wood-boring machines, and grinders manufactured by the Cleveland Pneumatic Tool Co. with the use of imported ball bearings.

TREASURY DEPARTMENT, *December 22, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 16, 1911), on air drills, wood-boring machines, and grinders manufactured by the Cleveland Pneumatic Tool Co., of Cleveland, Ohio, with the use of imported ball bearings.

The allowance shall not exceed the number of imported ball bearings appearing in the exported tools, as shown by the sworn statement and schedule of the manufacturers, dated December 9, 1914, which is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(103119.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Cleveland, Ohio.*

(T. D. 35009.)

Drawback on braids.

T. D. 33573 of June 19, 1913, extended to cover additional styles of braids manufactured by Goodman Bros. & Hinlein, of Philadelphia, Pa., with the use of imported artificial silk.

TREASURY DEPARTMENT, *December 23, 1914.*

SIR: The department's regulations of June 19, 1913 (T. D. 33573), providing for the payment of drawback on braids manufactured by Goodman Bros. & Hinlein, of Philadelphia, Pa., with the use of imported artificial silk, are hereby extended to cover the additional styles of braids specified in the sworn statement of the manufacturer dated December 14, 1914, transmitted herewith, manufactured by the said company with the use of imported artificial silk.

Supplementary sworn statements covering other styles of braid manufactured by Goodman Bros. & Hinlein with the use of imported artificial silk may be filed and upon verification thereof by the special agent drawback on the braids covered thereby may be allowed.

Respectfully, ANDREW J. PETERS,
(97420.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Philadelphia, Pa.*

(T. D. 35010.)

Drawback on automobiles and automobile trucks.

Drawback on automobiles, automobile trucks, and parts thereof manufactured by the Peerless Motor Car Co., of Cleveland, Ohio, with the use of imported materials.

TREASURY DEPARTMENT, *December 23, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (T. D. 31695 of June 11, 1911), on automobiles, automobile trucks, and parts of automobiles and automobile trucks manufactured by the Peerless Motor Car Co., of Cleveland, Ohio, in whole or in part with the use of imported merchandise and with the use of merchandise manufactured in the United States with the use of imported materials, which is covered by drawback rates now existing or which shall be promulgated in the future, under the conditions set forth in the sworn statement of the said company dated October 22, 1914, transmitted herewith, and the sworn statements filed by the domestic manufacturers in connection with drawback rates covering materials and parts supplied to the Peerless Motor Car Co.

A manufacturing record shall be kept by the Peerless Motor Car Co., which will show, in addition to the usual import data, the serial number and style of each automobile and automobile truck and the name and symbol number of each automobile or automobile truck part manufactured for exportation with benefit of drawback, the quantity and value of each kind of imported merchandise, and the quantity of domestic merchandise manufactured with the use of imported merchandise used in the manufacture of such automobiles, automobile trucks or parts, and the quantity and value of each kind of waste incurred. A sworn abstract from such manufacturing record shall be filed with each drawback entry.

The allowance shall not exceed the quantities of imported materials used in the manufacture of the exported automobiles, automobile trucks, or parts, as shown by the sworn abstract from the manufacturing record prescribed above and allowed by drawback rates separately established covering materials and parts supplied to the Peerless Motor Car Co., said allowances to be reduced according to the quantities of imported material which the values of the waste will replace.

Supplemental sworn statements and schedules may be filed modifying the original or showing the use of other imported merchandise or other merchandise manufactured from imported materials, new models of automobiles, trucks, or other parts of such automobiles and trucks manufactured for exportation, etc., such supplemental sworn statements or schedules shall be referred to the special agents for verification, and the report of the special agent, together with the

sworn supplemental statements and schedules submitted to the department for approval prior to liquidation of the entries referring thereto.

T. D. 27668 of October 22, 1906, T. D. 32451 of April 29, 1912, and all other Treasury decisions providing for the payment of drawback on automobile trucks and parts thereof manufactured by the Peerless Motor Car Co. are hereby revoked.

Respectfully, ANDREW J. PETERS,
(38523.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Cleveland, Ohio.*

(T. D. 35011.)

Drawback on pianos and player pianos.

T. D. 33418 of May 12, 1913, extended to cover pianos and player pianos manufactured by the Aeolian Co., of New York, N. Y., with the use of imported piano keys.

TREASURY DEPARTMENT, *December 24, 1914.*

SIR: The department's regulations of May 12, 1913 (T. D. 33418), providing for the payment of drawback on pianos, player pianos, etc., manufactured by the Aeolian Co., of New York, N. Y., with the use of imported materials specified therein, are hereby extended to cover pianos and player pianos manufactured by the same company with the use of imported piano keys.

The allowance shall not exceed the number of imported keys appearing in the exported pianos or player pianos as shown by the sworn statement of the manufacturers, dated November 23, 1914, transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(37337.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 35012.)

Drawback on aluminum and welding compounds.

Drawback on granulated or pulverized aluminum manufactured by the Goldschmidt Thermit Co., of New York, N. Y., with the use of imported crude aluminum and on welding compounds manufactured by the said company with the use of such granulated or pulverized aluminum.—T. D. 28125 of April 30, 1907, and T. D. 28924 of April 24, 1908, revoked.

TREASURY DEPARTMENT, *December 26, 1914.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations

(T. D. 31695 of June 16, 1911), on granulated or pulverized aluminum manufactured by the Goldschmidt Thermit Co., of New York, N. Y., wholly from imported notched-bar ingot (crude) aluminum, and on welding compounds designated as "plain thermit," "nickel thermit," "railroad thermit," "manganese addition," "semimixed thermit," "cast-iron thermit," and "titanium thermit" manufactured by the said company with the use of granulated or pulverized aluminum.

In the case of granulated or pulverized aluminum the allowance shall not exceed the weight of the same exported, and in the case of welding compounds the allowance shall not exceed the amount of granulated or pulverized aluminum appearing therein, as shown by the sworn statement and schedule of the manufacturers, dated December 9, 1914, which is transmitted herewith for filing in your office.

T. D. 28125 of April 30, 1907, and T. D. 28944 of April 20, 1908, are hereby revoked.

Respectfully, ANDREW J. PETERS,
(102969.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 35013.)

Wheat products.

Appeal directed from decision of the Board of United States General Appraisers of October 30, 1914, Abstract 36813 (T. D. 34871), involving the classification of a so-called wheat product from Germany.

TREASURY DEPARTMENT, *December 28, 1914.*

SIR: I have to acknowledge the receipt of your letter of the 10th instant inviting attention to the decision of the Board of United States General Appraisers of October 30, 1914, Abstract 36813 (T. D. 34871), in which the board held that a certain so-called wheat product was free of duty under paragraph 644 of the tariff act of October 3, 1913, although it appears that the product was from Germany, a country which imposes a duty on wheat, wheat flour, or semolina when imported from the United States.

In view of the importance of the issue, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision under subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, ANDREW J. PETERS,
(100269.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 35014.)

Emergency revenue law—Stamp tax—Certificates of exportation of domestic merchandise.

Certificates of exportation of domestic merchandise (Cat. No. 4467) are not subject to tax under the act of October 22, 1914.

TREASURY DEPARTMENT, *December 28, 1914.*

SIR: Referring to your letter of the 10th instant, I have to advise you that, under a ruling of the Commissioner of Internal Revenue, certificates of exportation of domestic merchandise (Cat. No. 4467) are not subject to tax under the act of October 22, 1914, they not being certificates required by express provision of law.

Respectfully, ANDREW J. PETERS,
(103103.) *Assistant Secretary.*

Mr. W. H. ALLISON, *Detroit, Mich.*

(T. D. 35015—G. A. 7652.)

Jute thread waste.

1. JUTE THREAD WASTE—ACT 1913.

Merchandise reported by the appraiser as jute thread waste composed of the short ends of new, unused jute thread, and otherwise shown by the testimony of the importers to be the warp ends, mill waste, or offals of machinery resulting in the manufacture of jute bagging or cloth, and which is also shown to be suitable for paper making, *held* to be free of duty under paragraph 408, tariff act of 1913, as waste of one of the articles therein described suitable for the manufacture of paper.

2. THE WORD "SUITABLE" DEFINED.

The word "suitable" in the tariff law means actually, practically, and commercially fit.—Kahlen *v.* United States (2 Ct. Cust. Appls., 206; T. D. 31947).

United States General Appraisers, New York, December 21, 1914.

In the matter of protest 746283 of Thos. Crompton & Son against the assessment of duty by the collector of customs at the port of Philadelphia.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

SOMERVILLE, *General Appraiser:* This importation was made under the tariff act of October 3, 1913. It is invoiced as 50 bales jute threads, and was assessed for duty at 10 per cent ad valorem under paragraph 384 of said act as waste not specially provided for. The claim is made that it is free of duty, first, under paragraph 408, which reads as follows:

408. Bagging for cotton, gunny cloth, and similar fabrics, suitable for covering cotton, composed of single yarns made of jute, jute butts, seg, Russian seg, New Zealand tow, Norwegian tow, aloe, mill waste, cotton tares, or other material not bleached, dyed, colored, stained, painted, or printed, not exceeding sixteen threads

to the square inch, counting the warp and filling, and weighing not less than fifteen ounces per square yard; plain woven fabrics of single jute yarns by whatever name known, not bleached, dyed, colored, stained, printed, or rendered noninflammable by any process; and *waste of any of the above articles suitable for the manufacture of paper.*

Or, secondly, under paragraph 566, reading:

566. Paper stock, crude, of every description, including all grasses, fibers, rags, waste, including jute, hemp and flax waste, shavings, clippings, old paper, rope ends, waste rope, and waste bagging, and all other waste not specially provided for in this section, including old gunny cloth and old gunny bags, *used chiefly for paper making.*

The question is to what extent paper makers use this waste in manufacturing paper. The appraiser reports:

The merchandise in question consisted of jute-thread waste composed of the short waste ends of new unused jute thread. * * * The merchandise is principally used for making over carpet yarns, and is not used for paper stock. Its character is as above described, and it is to be distinguished from the "jute waste" provided for in paragraph 566 of the 1913 tariff act, which consists of a fine loose mill waste composed of short, loose jute fibers, known as "fly waste." It is entirely different from waste composed of old gunny cloth and bags.

The importer testified that it is a mill waste; that he buys it as such, and that he has known it by that name for 20 years; that it is waste from looms—the warp ends resulting in the manufacture of jute bagging or cloth; and that, while it is chiefly used by blanket men and carpet-yarn men, similar stock is sold and used for paper making.

Another witness testified that the merchandise is a mill waste, only in a thread form, and otherwise termed jute-thread waste; that when the market gets high enough paper makers use it; that he has dealt in the same commodity himself and has been paying duty thereon under the old tariff acts as jute waste; that it is a waste, and is also known as offals of machinery.

This article, in our opinion, is not used chiefly for paper making, according to the testimony. By chief use is meant the predominant use to which identical or similar articles are applied, and not the exceptional use for other purposes. And in determining such use the board will consider the use of such articles, whether of domestic or foreign manufacture, and will not restrict the investigation to imported merchandise. *In re* Oberle & Henry, G. A. 7194 (T. D. 31447). The claim under paragraph 566 must therefore be considered untenable.

The next question, then, is whether the article falls under paragraph 408 as waste of any of the articles described therein suitable for the manufacture of paper.

The tariff act of 1897, paragraph 632, provided free entry for "waste * * * fit only to be converted into paper." The corresponding paragraph 644 of the act of 1909 extended free entry

to "waste * * * used chiefly for paper making." Paragraph 408 of the present tariff act of 1913 makes an important change in this respect. It provides free entry for waste of any of the articles therein described *suitable for the manufacture of paper.*

The merchandise here in question is certainly a waste of one of the articles mentioned or described in said paragraph 408.

The word "suitable" has been defined by the Court of Customs Appeals in Kahlen *v.* United States (2 Ct. Cust. Appls., 206; T. D. 31947). It is there stated that a thing to be suitable, as that term is commonly understood, must be fit and appropriate for the end to which it is to be devoted. In the tariff law the term "suitable" means actually, practically, and commercially fit. The two witnesses who testified in this case both stated that this waste is used for paper making. We accordingly hold that it is suitable for the purpose, and that it is actually, practically, and commercially so fit.

The protest is sustained under said paragraph 408, and the collector's decision is reversed, with instructions to reliquidate the entry in accordance herewith.

(T. D. 35016—G. A. 7653.)

Stuffed chicks and ducklings.

The skins of natural chicks and ducklings with covering of down, dressed and stuffed so as to preserve their natural appearance, are dutiable under the provision in paragraph 347, tariff act of 1913, for down on the skin "when dressed, colored, or otherwise advanced or manufactured in any manner and not suitable for use as millinery ornaments."—Morimura *v.* United States (141 Fed., 383; T. D. 25872) holding similar merchandise entitled to free entry as "birds, stuffed, not suitable for millinery ornaments" under paragraph 493 of the tariff act of 1897, noted.

United States General Appraisers, New York, December 21, 1914.

In the matter of protest 732130 of Morimura Bros. against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers; Brown, G. A., not participating).

McClelland, *General Appraiser:* The special report of the appraiser on this protest states:

The merchandise consists of natural ducklings stuffed with cotton and dressed. * * * As the down, dressed, is the component material of chief value in the article it was returned for duty as downs on the skin, dressed, not suitable for millinery ornaments, at 40 per cent ad valorem, paragraph 347, act of October 3, 1913.

Duty was accordingly assessed at the rate of 40 per cent ad valorem under the second provision of paragraph 347 of the tariff act of 1913. Protestants claim free entry should have been allowed under paragraph 416 as "birds and land and water fowls," and alternatively

that duty should have been assessed at either 20 per cent under the first provision of said paragraph 347 at 30 per cent under paragraph 266 as manufactures of cotton or at 35 per cent ad valorem under paragraph 342 as toys.

In G. A. 5655 (T. D. 25234) the question of the classification of chicks and ducklings, similarly prepared, under the tariff act of 1897 was before the board. In that case the collector had classified them as toys and assessed duty accordingly. The alternative claims were that such chicks and ducklings were entitled to free entry under one of the two following paragraphs:

493. Birds, stuffed, not suitable for millinery ornaments.
494. Birds and land and water fowls.

The board overruled these claims and sustained the collector's classification. From the board's decision an appeal was taken to the United States Circuit Court and there the board was reversed, the court holding that the merchandise should have been classified as birds, stuffed. Morimura *v.* United States (141 Fed., 383; T. D. 25872). From the date of that court decision down to the passage of the tariff act of 1913 such chicks and ducklings were returned by appraisers as stuffed birds and passed free of duty, but in the tariff revision of 1913, the provision for stuffed birds (paragraph 509 of the tariff act of 1909) was omitted. The provision for birds and land and water fowls was continued as paragraph 416 of the existing law.

These protestants were appellants in one of the cases reported in T. D. 25872, *supra.* In that case their contention was that the merchandise was not toys, and that view having been sustained they can not with good grace now urge the reverse view, the law and the facts being the same. Following the court the claim in this protest that the merchandise is toys is overruled.

The claim under paragraph 266 is overruled for the reason that there is no evidence that the cotton used in stuffing these articles is the component material of chief value, even if it were to be seriously considered whether or not such chicks and ducklings were manufactures of cotton.

The claim for free entry as birds and land and water fowls is overruled, first, because the language of paragraph 416 very clearly was not intended to apply to the young of fowls, manufactured as are these in question, and, second, because that question was alternatively presented to the court in Morimura *v.* United States, *supra,* and the court having held that they were stuffed birds, in effect held they were not classifiable as "birds and land and water fowls."

It remains only to determine between the classification of the collector and the claim for duty at 20 per cent ad valorem under the first provision of paragraph 347. It will not be disputed that the covering on the skins of these chicks and ducklings is down, nor is

it to be denied that the skins have been advanced beyond their natural state. It is in fact shown by the testimony that they have been preserved, dressed, and stuffed with cotton. The language of paragraph 347 relied upon for the 20 per cent rate is as follows:

Feathers and downs, on the skin or otherwise, crude or not dressed, colored, or otherwise advanced or manufactured in any manner, not specially provided for in this section, 20 per centum ad valorem.

In view of the changed condition of the skins as above stated, as well as by reason of the processes of manufacturing to which they have been subjected to preserve their natural appearance of chicks and ducklings, this claim must also be overruled, and it follows that the collector was right in his classification under the second provision of paragraph 347 following that above quoted, which reads:

When dressed, colored, or otherwise advanced or manufactured, in any manner and not suitable for use as millinery ornaments, including quilts of down and manufactures of down, 40 per centum ad valorem.

We accordingly overrule the protest and affirm the decision of the collector.

(T. D. 35017—G. A. 7654.)

Waverly shortbread—Similitude clause.

Waverly shortbread, containing sugar, butter, and flour, but no other ingredients, is classifiable under paragraph 417, tariff act of 1913, which grants free entry to "biscuits, bread, and wafers, not specially provided for in this section," and is not dutiable under paragraph 194 by similitude to "baked articles, * * * containing chocolate, nuts, fruit, or confectionery." To apply the similitude clause in such way would result in nullifying the very limitations which have been written into paragraph 194.—Schoenemann *v.* United States (119 Fed., 584), and Fensterer *v.* United States (1 Ct. Cust. Appls., 93; T. D. 31110) followed.

United States General Appraisers, New York, December 21, 1914.

In the matter of protest 746883 of Dunlop & Ward against the assessment of duty by the collector of customs at the port of New York.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

WAITE, *General Appraiser:* The commodity in question is invoiced as "Waverly shortbread." It has been assessed under paragraph 194, tariff act of 1913, and is claimed to be free of duty under paragraph 417. The paragraphs read:

194. Biscuits, bread, wafers, cakes, and other baked articles, and puddings, by whatever name known, containing chocolate, nuts, fruit, or confectionery of any kind, and without regard to the component material of chief value, 25 per centum ad valorem.

417. Biscuits, bread, and wafers, not specially provided for in this section.

From an inspection of the sample in evidence and a consideration of the testimony, we are of the opinion that this does not contain

any of the ingredients that would bring it within the scope of paragraph 194. The witness stated that it contains flour, sugar, and butter, but no chocolate, nuts, fruit, or confectionery. The report of the appraiser is to the effect that—

> The merchandise consists of Waverly shortbread or cake, containing chocolate, nuts, fruits, or confectionery, returned for duty at 25 per cent ad valorem under paragraph 194, act of 1913.

According to the red-ink indorsement on the invoice, however, this commodity would seem to have been returned for duty under paragraph 194 because "similar to cakes containing chocolate, nuts, fruit, or confectionery."

We do not think the similitude clause can be applied in such a way. The very fact that paragraph 194 enumerates baked articles containing the materials there named excludes, in effect, those articles which do not contain such materials. Note Schoenemann *v.* United States (119 Fed., 584), wherein the court said:

> It must be presumed that the lawmaking power * * * did not intend that the very differentiation made by the law itself should be nullified and made of no effect by this similitude provision.

The reasoning of this case was adopted and followed by the Court of Customs Appeals in Fensterer *v.* United States (1 Ct. Cust. Appls., 93; T. D. 31110).

The commodity in question seems to be known as a kind of bread. As stated above, it is invoiced as "Waverly shortbread," and the carton containing the sample in evidence is labeled with those words. It was referred to at the hearing both as bread and as cake. It contains neither chocolate, nuts, fruit, or confectionery, and if it were not sweetened there would be no hesitancy in classifying it under paragraph 417. It, however, is shown by the record to be sweetened; we think, nevertheless, it should still be classified under paragraph 417, as, in our judgment, Congress intended to provide in either paragraph 194 or 417 for all baked articles which may be classified among the comestibles, and, as stated above, it is excluded from paragraph 194 by virtue of the limitations thereof. We do not think it was intended to exclude a baked article from both these paragraphs simply because it may be sweetened, as clearly both sweetened and unsweetened articles are provided for in the free list, and as clearly are provided for in paragraph 194, where is included all baked articles by whatever name known if containing chocolate, nuts, fruit, or confectionery. We note there is bread which is sweetened and bread which is not sweetened; biscuits which are sweetened and those which are not sweetened; and also that a great many commodities of both the Huntley & Palmer Co. and the National Biscuit Co. are designated as biscuits, whether they are sweetened or not. The term "wafer" also is applied whether the article is sweetened or not, and many are sweetened.

The dictionaries define these words as follows:

Standard Dictionary:

Biscuit.—1. [U. S.] A small soft cake, generally shortened with lard or butter and unsweetened; often eaten hot.

2. A cracker; so called in England. In the United States this use is commonly restricted to fancy biscuits or sweet crackers.

Wafer.— * * * 5. Cookery. (1) A circular cake of cooked paste, as of flour. See Waffle.

(2) A very thin light biscuit; when sweetened called sugar wafer.

Century Dictionary and Cyclopedia:

Biscuit.—1. A kind of hard, dry bread, consisting of flour, water or milk, and salt, and baked in thin flat cakes. The name is also extended to similar articles very variously made and flavored.

2. A small, round, soft cake made from dough raised with yeast or soda, sometime shortened with lard, etc. * * * Naples biscuit, lady's-fingers.

Wafer.—A thin cake or leaf of paste, generally disk shaped. Specifically * * * (b) A small and delicate cake or biscuit, usually sweetened, variously flavored, and sometimes rolled up.

Webster's Dictionary:

Biscuit.—1. A kind of unraised bread, of many varieties, plain, sweet, or fancy, formed into flat cakes, and baked hard; as, ship biscuit.

2. A small loaf or cake of bread, raised and shortened or made light with soda or baking powder. Usually a number are baked in the same pan, forming a sheet or card.

Wafer.—1. (Cookery.) A thin cake made of flour and other ingredients. * * * Wafer cake, a sweet thin cake.

So we conclude that the commodity involved in this case contains none of the ingredients mentioned in paragraph 194; that it is directly embraced within the description of bread, biscuit, or wafers, probably within the terms bread or biscuit, and should be classified under paragraph 417. The protest is therefore sustained.

(T. D. 35018—G. A. 7655.)

Forceps, etc.—Nippers and pliers.

Forceps and certain other surgical instruments, by reason of their construction and the uses to which they are applied, are clearly within the category of nippers, and as such are properly classifiable under the *eo nomine* provision for "nippers and pliers of all kinds" in paragraph 166, tariff act of 1913, as here assessed, rather than as manufactures of metal not specially provided for under paragraph 167 of said act, as claimed.

United States General Appraisers, New York, December 26, 1914.

In the matter of protests 745894/49872, etc., of Frank S. Betz Co. *et al.* against the assessment of duty by the collector of customs at the port of Chicago.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

FISCHER, *General Appraiser:* The merchandise covered by these protests is described on the various invoices as forceps, clamps, needle-holders, tonsil schnurers, tonsil clamps, zangen, and rongeur.

Duty was levied thereon at 30 per cent ad valorem under the provision for "nippers and pliers of all kinds wholly or partly manufactured" contained in paragraph 166 of the act of 1913, and said articles are claimed to be properly dutiable at but 20 per cent ad valorem under paragraph 167 of said act as manufactures of metal not specially provided for.

At the hearing the protests were submitted for decision on the official record without the introduction of samples of the merchandise or other evidence which would tend to support the claims alleged in said protests, the importers evidently relying for a favorable ruling upon the following report of the local appraiser which accompanied the papers when transmitted to the board, but which was made and signed after the respective dates on which said protests were filed with the collector:

The merchandise described as one-half dozen No. 1925 rib-cutting forceps consists of nippers composed of steel, used for cutting ribs, properly returned for duty under paragraph 166, act of 1913, at 20 per cent ad valorem. The balance of the merchandise covered by this protest consists of surgical clamps, forceps, and needle holders, which were advisorily returned for duty as "nippers" and "pliers" at the rate of 30 per cent ad valorem under paragraph 166. None of these latter articles are commercially known as nippers or pliers, and following further consideration of the subject, this office is now advisorily returning such instruments as manufactures of metal n. s. p. f., paragraph 167, at 20 per cent ad valorem. This is also in harmony with the practice at the port of New York. The protest, therefore, is considered well founded.

While this report has reference to the merchandise covered by protest No. 745894, a substantially similar report accompanies each of the other protests here under consideration.

Although it is true that a report of an appraising officer, except in so far as it pertains to the dutiable value of imported merchandise, is entitled to be given no weight or legal effect whatsoever (National Hat Pin Co. *v.* United States, 5 Ct. Cust. Appls., —; T. D. 34971), nevertheless we can not refrain from expressing our opinion that the particular reports here in question were made not only without warrant of law, but on their very face are utterly contradictory, inconsistent, and completely at variance with the facts which they purport to cover. For instance, articles described on invoice as "rib-cutting forceps" are reported by the appraiser to consist of nippers, and all other items covered by these protests are likewise reported by him as consisting of nippers and pliers. Why, then, may we ask, are they not classified for duty as "nippers and pliers" under the *eo nomine* provision therefor in said paragraph 166? Certainly a provision for "nippers and pliers of all kinds, wholly or partly manufactured," would seem to be sufficiently comprehensive in scope to embrace therein such items on the invoices which are shown by the return of the appraiser thereon to be precisely of that character.

Now, if such articles were nippers and pliers when the appraiser made his original return, and were still nippers and pliers when he

rendered his supplemental or amended return, how can it be said that they are properly dutiable at a rate other than that fixed by Congress for nippers and pliers?

It may be that the appraiser based his report upon his opinion as expressed therein that "none of these latter articles are commercially known as nippers or pliers"; but that statement, together with his conclusion evidently predicated thereon, that "this protest, therefore, is considered well founded," must be treated alike as gratuitous offerings on his part, and, as before stated, entitled to no consideration whatever.

Neither samples of the merchandise nor testimony having been offered in evidence, we are necessarily obliged to have recourse to the invoice descriptions and to the common and ordinary meaning of the terms there employed in order to determine the proper dutiable classification of the articles in question.

We find the following definitions of the word "forceps":

Pincers for grasping or removing bodies that can not well be otherwise reached or handled. Forceps are used by dentists in extracting teeth * * *; by surgeons in removing splinters or other foreign substances, as from a gunshot wound; and in obstetrics to embrace the head of the fetus and aid its passage through the pelvis.—*Standard Dictionary*.

1. A pair of pincers or tongs; 2 Surg. A two-bladed instrument for grasping and holding firmly that to which it is applied, as the head of the child for facilitating delivery.—*Webster's Dictionary*.

1. An instrument, such as pincers or tongs, used for seizing, holding, or moving objects which it would be impracticable to manipulate with the fingers.—*Century Dictionary*.

1. An instrument of the pincers kind, used for seizing and holding objects, esp. in surgical and obstetric operations.—*Oxford Dictionary*.

And the word "nippers" is defined as—

An instrument like a pair of pincers or tongs; a grasping tool with cutting or pinching jaws; tweezers or pliers.—*Standard Dictionary*.

Any of various devices for nipping, as * * * *e*. dentists' forceps for bending plates.—*Webster's Dictionary*.

One of various tools or implements like pincers or tongs: * * * (*b*) Mechanical forceps of different forms used by dentists for cutting out or bending plates, punching rivet holes, etc.—*Century Dictionary*.

4. An instrument, usually made of iron or steel, having two jaws by which a thing may be firmly seized and held, or cut through, by pressure exerted upon the handles; forceps, pincers, pliers.—*Oxford Dictionary*.

And the word "pincers" is defined as—

An instrument having two lever handles and two jaws working on a pivot; nippers.—*Standard Dictionary*.

An instrument having two handles and two grasping jaws working on a pivot, used for grasping things.—*Webster's Dictionary*.

1. A tool having two hinged jaws which can be firmly closed and held together.—*Century Dictionary*.

A tool for tightly grasping or nipping anything, consisting of two limbs pivoted together, forming a pair of jaws, with a pair of handles or levers by which they can be pressed tightly together.—*Oxford Dictionary*.

In a circular letter of instructions, dated March 14, 1914, addressed to the collector of customs at New York and published as T. D. 34270, the Treasury Department had under advisement the question whether certain pliers and surgical forceps were alike dutiable under the provision for "nippers and pliers of all kinds" in said paragraph 166. The department therein expressed the opinion that said provision should be limited to tools and implements having two lever handles working on a pivot, with cutting, pinching, or gripping jaws, and then proceeded to contradict itself by excluding from such category surgical forceps and like instruments which are unquestionably included therein.

We agree that the description of the term "nippers" as adopted by the department and as set forth in the foregoing definitions accurately describes that particular class of merchandise, but we do not concur in its opinion that surgical forceps are not likewise embraced within that class, for the reason that both in the principle of construction, as well as in the purposes for which they are employed, forceps would correctly respond to any of the foregoing definitions of the term "nippers." We are, therefore, completely at a loss to understand upon what theory the department has seen fit to exclude from the general class of merchandise known as "nippers" the particular variety thereof called "forceps." Surely, the latter may be correctly defined as an instrument having two blades or jaws and two lever handles working on a pivot and intended for use in grasping and holding firmly the things to which it is applied. *In re* Friedenberg, G. A. 7037 (T. D. 30689).

Nor do we consider it an essential feature that the two jaws of a pair of nippers should necessarily meet as a result of pressure on the two lever handles. Forceps—which we are satisfied are a species of nippers—when designed for use in obstetric operations are so constructed that the jaws will not, by reason of pressing together the lever handles, close up entirely, otherwise it is too plain to see that injury, rather than benefit, would result from their use.

Moreover, we are reassured that our attitude with respect to the questions here at issue is the correct one when we examine the provisions of paragraph 198 of the act of 1909, the predecessor of the present paragraph 166. Said paragraph 198 provided for—

> Nippers and pliers of all kinds (except blacksmiths' tongs, surgical and dental instruments or parts thereof), wholly or partly manufactured.

In Arnold *v.* United States (147 U. S., 494–499), a case which involved the question whether certain knit woolen shirts, drawers, and hosiery came within the enumeration of "clothing, ready made, and articles of wearing apparel of every description, made up or manu-

factured wholly or in part * * * of wool," Mr. Justice Brewer made use of the following language:

> * * * In Brown *v.* Maryland (12 Wheat., 419, 438), Chief Justice Marshall recognized as "a rule of interpretation, to which all assent, that the exception of a particular thing from general words proves that, in the opinion of the lawgiver, the thing excepted would be within the general clause had the exception not been made." Applying that rule it follows that but for the exception the general description of "clothing, ready made, and wearing apparel" would include knit goods; * * *.

Hence, following that eminent authority, it must be presumed that, in enacting the present paragraph 166 without in any way limiting its scope, Congress intended that "blacksmiths' tongs, surgical and dental instruments or parts thereof," which were specially exempted from the provisions of the corresponding paragraph in the act of 1909, should now fall into and become properly subject to duty under the general provision in said paragraph 166 for "nippers and pliers of all kinds, wholly or partly manufactured." Note, also, G. A. 7609 (T. D. 34819).

Accordingly, all of the claims alleged in said protests, including the claim that, by virtue of the provision in paragraph J, subsection 7 of section 4 of the present tariff, a 5 per cent discount should be allowed upon all duties properly chargeable against the importations here in question, are hereby overruled, and the decision of the collector in each case is hereby affirmed.

(T. D. 35019—G. A. 7656.)

Turkish towels.

Turkish towels, being more specifically provided for as "towels * * * made of cotton" than as "manufactures or articles * * * made or cut from * * * pile fabrics," are dutiable at 25 per cent ad valorem under paragraph 264, act of 1913, and not at 40 per cent ad valorem under paragraph 257.

United States General Appraisers, New York, December 26, 1914.

In the matter of protests 759664, etc., of Geo. Borgfeldt & Co. *et al.* against the assessment of duty by the collectors of customs at the ports of Los Angeles and Philadelphia.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

COOPER, *General Appraiser:* The merchandise covered by these protests consists of Turkish towels, which were returned for duty at the rate of 40 per cent ad valorem under the following provisions in paragraph 257 of the act of 1913:

> 257. * * * Manufactures of articles in any form, * * * made or cut from plushes, velvets, velveteens, corduroys, or other pile fabrics composed of cotton or other vegetable fiber, except flax, hemp, or ramie. * * *

Protestants claim that said articles are dutiable at the rate of 25 per cent ad valorem under paragraph 264 as—

> 264. Towels * * * made of cotton, or of which cotton is the component material of chief value, * * * not embroidered nor in part of lace and not otherwise provided for. * * *

The question at issue is as to the relative specificness of the two paragraphs. The question of whether or not Turkish towels are pile fabrics is not raised or passed upon in this case, although it has been held that Turkish towels and toweling are not pile fabrics within commercial understanding, G. A. 5068 (T. D. 23487), G. A. 5838 (T. D. 25746). In the case of *In re* Gardner, G. A. 7609 (T. D. 34819), this board held that the provision for "towels" in paragraph 264 was more specific than the provision for "all other Jacquard figured manufactures of cotton" in paragraph 258. The reasoning in that case is applicable to the question involved in this case and is persuasive of the correctness of the classification contended for by the importer. As to the question of legislative intent, we said:

> If we take into consideration the fact that Jacquard goods are fancy goods, and that all the goods provided for in paragraph 258 are in the nature of luxuries, we can easily see the reason why Congress made special provisions, at lower rates of duty, for "towels, bath mats, quilts, blankets, polishing cloths, mop cloths, wash rags or cloths, sheets, pillowcases, and batting," because each and every one of them is a necessity in every home.

Plushes, velvets, velveteens, corduroys, and other pile fabrics are likewise fancy goods in the nature of luxuries, and, under the same reasoning, the towels in question should be classed with the other necessaries in paragraph 264. Turkish towels are one of the common varieties of towels in everyday use and we are of opinion that the legislative mind had such articles in view when it made the specific provision for "towels * * * made of cotton," and that it intended that the duty on all of such articles of daily necessity should be uniform. In United States *v.* Wolff (5 Ct. Cust. Appls., —; T. D. 34943), Judge De Vries, speaking for the court, said:

> That construction of a tariff statute which will render duties uniform upon uniform classes and kinds of goods is greatly to be desired must be assumed to have been the congressional purpose and should not be denied save for cogent and clearly convincing reasons.

It is noted that paragraph 264 is limited by the phrase "not otherwise provided for," while paragraph 257 is not so limited. As to that point, our ruling in the case of *In re* Gardner, *supra*, is applicable here. We said:

> Another argument made in support of the correctness of the collector's classification is that the provisions of paragraph 264 are limited by the phrase "not otherwise provided for," while those of paragraph 258 are not so limited. We are of opinion that there is no force in this reasoning, however, as it has been held in numerous decisions that the phrase "not specially provided for" does not lessen the relative specific qualities of the provision it modifies. See Knauth, Nachod & Kuhne *v.* United States (4 Ct. Cust. Appls., 58.; T. D. 33307) and the authorities therein cited.

We hold that the provisions of paragraph 264 are more specific and more accurately describe the merchandise here in question than do those of paragraph 257. Turkish towels are therefore dutiable at 25 per cent ad valorem under paragraph 264.

The protests are sustained.

(T. D. 35020.)

Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, Somerville, and Hay.

BEFORE BOARD 1, DECEMBER 21, 1914.

No. 87079.—RADIUM RESIDUUM—FERTILIZER.—Protest 760721 of American Express Co. (New York). Opinion by McClelland, G. A.

The residuum of the manufacture of radium, consisting chiefly of silica, alumina, and lime, classified as unwrought earth under paragraph 76, tariff act of 1913, was held free of duty as a substance used only for manure (par. 499).

No. 87080.—ARTISTS' COLORS—PAINTS.—Protest 759573 of A. H. Ringk & Co. (New York). Opinion by McClelland, G. A.

Colors imported in 10-pound tins to be transferred to tubes to be sold to artists and to schools without further manipulation were held properly classified under the second provision of paragraph 63, tariff act of 1913.

No. 87081.—OXIDE OF CHROMIUM—COLORS.—Protest 753694 of E. M. & F. Waldo (New York). Opinion by McClelland, G. A.

Oxide of chromium containing no lead or potassium bichromate, classified as chrome green under paragraph 54, tariff act of 1913, was held dutiable as a color under the first part of paragraph 63.

No. 87082.—PEACH-KERNEL OIL.—Protest 732962 of Geo. Lueders & Co. (New York). Opinion by McClelland, G. A.

Oil made from peach kernels, classified as sweet almond oil, was held dutiable as oils not specially provided for under the provisions of paragraph 45, tariff act of 1913. Abstract 36903 (T. D. 34933) followed.

No. 87083.—NUT OIL.—Protest 692385 of S. L. Jones & Co. (San Francisco). Opinion by McClelland, G. A.

Oil represented to have been made from the nuts of the perilla tree, classified as an expressed oil under paragraph 3, tariff act of 1909, was claimed free of duty as nut oil (par. 639). Protest overruled.

No. 87084.—LACE PINS—JEWELRY.—Protest 604288 of B. Altman & Co. (New York).

SULLIVAN, *General Appraiser:* The merchandise is pins about 1½ inches long, having violet colored imitation pearl heads and gold-plated shafts.

At the trial, counsel for the importers limited his claim to the items represented by the samples introduced in evidence, which were marked Exhibit 1, and which represent items on the thirteenth page of invoice, Consular No. 8265, No. 5, 10 gross violet pins, 1.20 francs, less 10 per cent, returned as plated jewelry, 60 per cent ad valorem, paragraph 448, tariff act of 1909, and claimed dutiable at 45 per cent ad valorem under paragraphs 109 and 199.

At the trial the record in protest 601239 was admitted in evidence and made a part of the record in the case at bar. That case covered lace pins with imitation pearl heads similar to those in this case, and was decided by the board in favor of the importers, the board stating:

The concurrent testimony of all the witnesses is conclusive on the point that the pins in question are not commercially known as jewelry.

(In the matter of protests 601239, etc., of A. Steinhardt & Bro. et al., G. A. 7375 (T. D. 32642).)

* * * * * * *

In Altman *v.* United States (5 Ct. Cust. Appls., —; T. D. 34475) the Court of Customs Appeals had before it lace pins with gold-plated steel shafts and paste heads in colors, pink, blue, green, mauve, and white. In that case samples of the white pins only were produced, and had somewhat the appearance of small imitation pearls. The pins were all valued at less than 20 cents per dozen. The court reversed the board's holding that they were jewelry, and distinguished between that case and United States *v.* Flory (4 Ct. Cust. Appls., 87; T. D. 33367), which the board followed. The court said that in the Flory case the pins were fully gold plated and had solid heads, and that the pins which were held by the board and the courts not to be commonly known as jewelry performed the office of mere pins, but had longer shanks and larger heads composed either of imitation round or baroque pearls or of plain wax, paste, or glass, colored to harmonize with the apparel to which attached.

While the testimony in the case at bar is conflicting, in view of the above authority, the decisions therein cited and G. A. 7375, *supra*, the protests are sustained, the merchandise held dutiable at 45 per cent ad valorem under paragraph 109 or 199, and the collector's classification thereof as jewelry reversed.

No. 87085.—Hatpins—Millinery Ornaments—Jewelry.—Protest 217133 of Kaufmann, Aron & Warshauer (New York). Opinion by Sullivan, G. A.

G. A. 6139 (T. D. 26679) followed as to hatpins having glass and metal tops held dutiable as jewelry under paragraph 434, tariff act of 1897. Millinery ornaments of imitation jet were held dutiable under paragraph 112, as claimed. G. A. 6995 (T. D. 30444) followed.

No. 87086.—Jewelry.—Protest 593435 of M. & M. Koch and protests 419906, etc., of New York Merchandise Co. (New York), and protests 729410, etc., of L. Dannenbaum's Son et al., protest 486634 of M. Rice & Co., and protest 632762 of Strawbridge & Clothier (Philadelphia). Opinions by Sullivan, G. A.

Cohn *v.* United States (4 Ct. Cust. Appls., 378; T. D. 33536) followed as to merchandise commonly known as jewelry.

Before Board 2, December 21, 1914.

No. 87087.—Show Cards—Surface-Coated Paper.—Protests 730994, etc., of Chas. D. Stone & Co. (New York). Opinion by Fischer, G. A.

Signs made of paper board covered with surface-coated paper, classified under paragraph 324, tariff act of 1913, were claimed dutiable as manufactures of metal (par. 167) or as papers or cardboard die cut (par. 332). Protest overruled. United States *v.* Wyman (4 Ct. Cust. Appls., 411; T. D. 33851) distinguished.

No. 87088.—Jute Sugar Bags.—Protests 731645, etc., of the Central Aguirre Co. et al. (San Juan). Opinion by Cooper, G. A.

Sugar bags made from twilled jute, classified under paragraph 284, tariff act of 1913, were claimed dutiable as bags made from plain woven fabrics (par. 281). Protests overruled. G. A. 6063 (T. D. 26445) and G. A. 7568 (T. D. 34492) followed.

Before Board 3, December 21, 1914.

No. 87089.—Artistic Antiquities.—Protest 749665–48233 of Frank Lloyd Wright (Chicago). Opinion by Waite, G. A.

Protest overruled claiming free entry for certain goods as artistic antiquities under paragraph 717, tariff act of 1909.

No. 87090.—GROUND, DESICCATED POTATOES.—Protests 753130, etc., of Stein, Hirsch & Co. et al. (New York). Opinion by Waite, G. A.

Potatoes dried or desiccated and then ground, classified as a nonenumerated manufactured article under paragraph 385, tariff act of 1913, were claimed free of duty as potatoes dried, desiccated, or otherwise prepared (par. 581). Protests overruled, the board holding that the potatoes have lost their characteristics as potatoes by a further process of manufacture than simply slicing or drying, and are therefore excluded from paragraph 581. See Abstract 23912 (T. D. 30901).

No. 87091.—SAMPLES.—Protest 735614 of Rosenthal-Sloan Millinery Co. (St. Louis). Opinion by Somerville, G. A.

Certain trimmings classified under paragraph 402, tariff act of 1909, were claimed entitled to free entry as samples of no commercial value. Protest overruled. G. A. 7479 (T. D. 33619) and Badische *v.* United States (4 Ct. Cust. Appls., 374; T. D. 33535) followed.

No. 87092.—GOOSE BREASTS CONTAINERS—IMMEDIATE COVERINGS.—Protest 745792 of S. Schmidt & Co. (New York).

HAY, *General Appraiser:* Certain goose breasts wrapped in their own skins and packed in sealed tin containers with brine were assessed for duty under paragraph 229 of the tariff act of 1913, which reads:

Par. 229. Poultry, live, 1 cent per pound; dead, or prepared in any manner, including the weight of the immediate coverings or containers, 2 cents per pound.

The collector assessed duty upon the total weight of the goose breasts, the brine, and the tin containers. It is contended by the importers that the tin containers or the brine should have been excluded in assessing duty. Applying the case of Austin, Nichols & Co. *v.* United States (5 Ct. Cust. Appls., —; T. D. 34250), and Horsfield's case, Abstract 35593 (T. D. 34459), we are of the opinion that the collector's assessment is correct. It is true that in the latter case certain wooden cases in which chickens wrapped in two thicknesses of greased paper were shipped were held not to be the immediate coverings, but in that case Judge Waite expressly states:

We learn from the evidence in the case that *prepared* poultry is frequently brought in, if not generally, in tins which are sealed, in which case it would be perfectly consistent, in our judgment, to include the tin coverings.

The protest is overruled.

No. 87093.—CLERICAL ERROR.—Protest 731636 of Alexander Murphy & Co. (Philadelphia). Opinion by Hay, G. A.

Protest sustained claiming manifest clerical error, it being evident from the papers that one item was twice extended on the consular invoice.

No. 87094.—BASS FIBER.—Protests 655431, etc., of Osborn Manufacturing Co. et al. (Cleveland). Opinion by Hay, G. A.

Bass fiber made into uniform lengths and bundled, classified under paragraph 480, tariff act of 1909, was held entitled to free entry as crude vegetable substances (par. 630). Abstract 30026 (T. D. 32858) followed. United States *v.* Flatt (5 Ct. Cust. Appls., —; T. D. 34379) distinguished.

No. 87095.—FIRE BRICK.—Protests 752711, etc., of Lunham & Moore (New York). Opinion by Hay, G. A.

Merchandise classified as an earthy or mineral substance under paragraph 81, tariff act of 1913, was held dutiable as fire brick (par. 71). Abstract 26306 (T. D. 31813) followed.

(T. D. 35021.)

Memorandum of decisions, Court of Customs Appeals.

[Omitted from this edition.]

(T. D. 35022.)

Equipment of vessels—Transfer from one vessel to other vessels of the same line.

Appeal directed from decision of the Board of United States General Appraisers of November 24, 1914, G. A. 7639 (T. D. 34925), involving the transfer without payment of duty of steam winches from one vessel to other vessels of the same line.

TREASURY DEPARTMENT, *December 28, 1914.*

SIR: Your attention is invited to the decision of the Board of General Appraisers, dated the 24th ultimo, G. A. 7639 (T. D. 34925), wherein certain steam winches brought by a vessel of one line for transfer to other vessels of the same line were held to be entitled to transfer without payment of duty as being the "legitimate equipment of vessels" within the meaning of that term as used in section 2797, Revised Statutes, as amended by section 17 of the act of March 3, 1897.

In view of the importance of the issue, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the decision under subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, ANDREW J. PETERS.
(95545.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 35023.)

Emergency revenue law—Stamp taxes—Mail entries.

The stamps required for mail entries under the act of October 22, 1914, may be affixed and canceled by the addressee personally or by a customs or post-office officer as the agent of the addressee.

TREASURY DEPARTMENT, *December 31, 1914.*

SIR: The department duly received your letter of the 5th instant, requesting that you be advised whether mail entries (Cat. No. 3419) are subject to stamp tax under the act of October 22, 1914 and if so, whether the stamp must be affixed and canceled by the addressee upon delivery or whether the amount of the tax may be remitted to the customs officer and the stamp be affixed and canceled by such officer.

In reply, I have to call your attention to T. D. 34948, which provides that, under a ruling of the Commissioner of Internal Revenue, mail entries (Cat. Nos. 3419 and 3421) are subject to the same stamp taxation as regular entries under the act of October 22, 1914.

Under a further ruling of the Commissioner of Internal Revenue the stamp required under the said act for mail entries may be affixed and canceled by the addressee personally or by a customs or post-office officer as the agent of the addressee, as may seem best to the customs and post-office authorities.

Respectfully, ANDREW J. PETERS,
(103103.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Louisville, Ky.*

(T. D. 35024.)

Seed importation act of August 24, 1912.

Collectors instructed, in accordance with a request of the Secretary of Agriculture, to sample and detain all lots of seeds offered for import mentioned in T. D. 34393.

TREASURY DEPARTMENT, *December 31, 1914.*

To collectors and other officers of the customs:

At the request of the Secretary of Agriculture, you are hereby instructed, until otherwise advised, to sample and detain, pending an examination and report by the Secretary of Agriculture, all lots of seed offered for import mentioned in regulation 4 of the joint regulations for the enforcement of the seed importation act published in T. D. 34393 of April 23, 1914, enumerated as follows: Alfalfa, Canadian bluegrass, Kentucky bluegrass, millet, orchard grass, rape, redtop, timothy, clover, meadow fescue, awnless brome grass.

(92655-21.) ANDREW J. PETERS, *Assistant Secretary.*

(T. D. 35025—G. A. 7657.)

Wire staples.

Wire staples employed in the manufacture of automobile tires to anchor the cords at each side of the completed tire are properly exempt from duty under the provisions for "wire staples" in paragraph 554 of the tariff act of 1913, as claimed, rather than dutiable as manufactures of wire under paragraph 114 of said act, as classified by the collector.

United States General Appraisers, New York, December 29, 1914.

In the matter of protests 731339, etc., of the B. F. Goodrich Co. against the assessment of duty by the collector of customs at the port of Cleveland.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

FISCHER, *General Appraiser:* The merchandise in question is described on invoice as "staples," and consists of articles made of

wire bent into the form of a U. They are used to anchor cords while the same are being knitted into form for use in making automobile tires. In submitting his return on the merchandise, the appraiser made the following notation on the invoices: "Wire staples as manufactures of wire 15 per cent, paragraph 114," and the collector levied duty upon said articles accordingly.

The importers allege in their protest that said merchandise is properly entitled to free entry under the provisions of paragraph 554 of the act of 1913, or, if dutiable, that a discount of 5 per cent should be allowed on such dutiable charges, by virtue of the provisions of paragraph J of subsection 7 of section 4 of said act. However, the record contains no proof whatever in support of the latter claim, and the same is accordingly dismissed. The sole issue remaining, therefore, involves the classification of the wire articles.

Said paragraph 114, so far as here applicable, reads as follows:

114. Round iron or steel wire; wire composed of iron, steel, or other metal, except gold or silver, * * *; all other wire not specially provided for in this section and articles manufactured wholly or in chief value of any wire or wires provided for in this section; all the foregoing 15 per centum ad valorem; * * *.

The pertinent provision in said paragraph 554, under which the importers claim free entry for their merchandise, reads as follows: * * * Wire staples, * * *.

At the time of the first hearing before this board, this case was submitted on a record which then clearly established the following undisputed facts with respect to said merchandise: That said articles were wire staples which were employed in the manufacture of automobile tires for anchoring the cords at each side of the completed tire; that said staples were set in the tire machine on a ring which served to hold the staples in place while the machine, operating with an oscillating movement, carried the cords to and fro, knitting the same between the staples, as shown by illustrative Exhibit B herein. Upon that record the board sustained the claim alleged in said protests.

Subsequently, upon application of counsel for the Government, a rehearing was granted, at which the Government sought to prove by trade testimony that there was but one general class of wire staples, to wit, that which embraced articles made or formed from pieces of wire shaped in the form of a U, with sharpened points.

Frank L. Haggerty, the sole witness for the Government, testified that he was employed as a salesman by the American Steel & Wire Co.; that he had sold fence staples, double-pointed staples, etc., and that he was familiar with the merchandise which is known and recognized in the trade and commerce of this country under the name of "staples," and that the only articles that would be embraced within such term would be those which are made or formed from pieces of wire in the form of a U, with sharpened points. He further testified that said article was the only type of staple he knew of or had ever

handled. The testimony of a single witness, however, is insufficient to prove commercial designation. United States *v.* Oberle (1 Ct. Cust. Appls., 527; T. D. 31545).

There is, therefore, no competent proof in the record before us upon which to base any definite, uniform, and general trade understanding with respect to the articles here in controversy, and hence we are relegated to the common and ordinary meaning of the term "staples," as set forth in the dictionary definitions thereof. According to the Standard Dictionary, a staple may be either of the following:

1. A U-shaped piece of metal made by bending a small bar or wire and pointing the ends; often driven into wood, to serve as a fastening or part of a fastening by receiving the eye of a hasp, the point of a hook, the end of a bolt, or other fastener.
2. The box-like part into which the bolt of a lock shuts; a box staple.
3. The metal tube holding the reeds of instruments of the oboe class and carrying the vibrations into the wooden body of the instrument.
4. In founding, a piece of nail iron pointed at one end and having a disk of sheet iron riveted to the other, used to steady a core and gage the thickness of the metal.
5. A bent wire used in wire stitching.

There is also a class of staples well known to printers, lawyers, etc., which consists of small pieces of wire bent into the form of a U, but without sharpened points. This variety is extensively used for binding pamphlets, briefs, and other legal documents. Then there are two other types of staples of which we may take judicial notice, one of which is riveted to a metal plate to enable it to be fastened to chests, doors, etc., with the aid of wood screws; the other is an article constructed without points, and is intended to be riveted to metal doors or gates. It will thus be observed that at least these three varieties of staples are lacking in two of the distinguishing features which characterize the only article which the witness for the Government testified was recognized by him as a staple, in that they have neither sharpened points nor are they designed to be driven into wood.

From these various descriptions it is clearly apparent that there are several different kinds of staples, and that the testimony of the Government's witness to the effect that there is but one class which is known and dealt in in the trade and commerce of this country under that term would indicate that he has knowledge only with respect to the single variety of wire staples in which he deals. It need hardly be added that such testimony has no probative value in determining the dutiable classification of the article here under consideration.

We are therefore satisfied that the merchandise here imported belongs to the general class of wire staples, to which free entry is accorded under the provision in said paragraph 554 and that claim in the protests is hereby sustained and the decisions of the collector are reversed accordingly.

(T. D. 35026—G. A. 7658.)

Ethyl chloride.

Liquid imported in small glass tubes shown by analysis to be 99.85 per cent of ethyl chloride and fifteen one-hundredths of 1 per cent of parfumstoffe held to be ethyl chloride, subject to duty at the rate of 30 per cent ad valorem under the provisions of paragraph 21 of the tariff act of 1909 or at 20 per cent ad valorem under paragraph 29 of the tariff act of 1913.

United States General Appraisers, New York, December 29, 1914.

In the matter of protests 686581, etc., of Gonzalez Padin Co. et al. against the assessment of duty by the collectors of customs at the ports of San Juan and New York.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers; Brown, G. A., not participating).

McClelland, *General Appraiser:* The merchandise involved was imported into the ports of San Juan, Porto Rico, and New York. The collector at New York assessed duty on that which was imported during the life of the traiff act of 1909 at the rate of 60 per cent ad valorem under paragraph 67 of that act, and on that imported since the passage of the act of 1913 at the same rate under paragraph 48 thereof. Protestants claim duty should have been assessed at 30 per cent ad valorem under paragraph 21 of the traiff act of 1909 and at 20 per cent ad valorem under paragraph 29 of the tariff act of 1913.

The collector at San Juan assessed duty at the rate of 60 cents a pound and 50 per cent ad valorem under paragraph 67 of the tariff act of 1909 and at 40 cents a pound and 60 per cent ad valorem under paragraph 48 of the tariff act of 1913, and protestants claim that duty should have been assessed at 30 per cent ad valorem under paragraph 21, or in the alternative at 60 per cent ad valorem under paragraph 67 of the act of 1909 and at 20 per cent ad valorem under either of paragraphs 17, 29, 49, or in the alternative at 25 per cent ad valorem under paragraph 17, 10 cents a pound and 20 per cent ad valorem under paragraph 16, or 15 per cent ad valorem under paragraph 5 of the tariff act of 1913.

The merchandise is imported in small glass tubes. One of the protests states that the analysis shows the merchandise to consist of 99.85 per cent ethyl chloride and fifteen one-hundredths of 1 per cent of parfumstoffe, and the question involved is whether or not such an article is subject to duty as perfumery, as assessed, or as ethyl chloride, as claimed.

At the trial of these cases it was agreed between counsel for the importers and counsel for the Government that the merchandise under consideration is similar to that which was the subject of Abstract 31589 (T. D. 33263), the evidence on which decision was made being by agreement of counsel incorporated in and made a part of the record in this case, and the protests were submitted by counsel for importers on said agreement.

Merchandise similar to that involved in Abstract 31589, *supra*, was the subject of Abstract 31545 (T. D. 33263) and Abstract 34182 (T. D. 33963). In each of these decisions the board found the merchandise to be ethyl chloride showing only traces of essential oil, and sustained the claim for duty at 30 per cent ad valorem.

Protest 688005 was the subject of Abstract 34182, *supra*. This decision was appealed to the Court of Customs Appeals and there the board's decision was reversed on the ground that "the board erred in considering the records, which had not been properly received in evidence" (5 Ct. Cust. Appls., —; T. D. 34526), and the case was remanded to the board for a new trial.

On the trial of this case the examiner of perfumery in the appraiser's office at the port of New York was called on behalf of the Government and testified:

Q. Have you opened any of these tubes and familiarized yourself with its contents, the character of its contents?—A. Similar goods, yes.

Q. What was the character of it?—A. Extremely volatile solvent with added odor of some kind.

* * * * * * *

Q. How long would you say the odor would remain?—A. I don't know, sir; I have never tested it for that.

Q. Would it endure like ordinary perfume?—A. No; because there is no apparent fixative in here at all. It is not made as perfumery is made, with a fixative to hold the odor down.

* * * * * * *

Q. On removing the cap from one of these bottles the article begins to spray?—A. Yes, sir.

Q. It evaporates very quickly?—A. Yes, sir.

Q. It produces a cold and disagreeable sensation?—A. Yes.

Q. Perfume, on the other hand, does not spray?—A. Not of its own will. It is often sprayed.

It thus appears that the merchandise in question is similar in all respects to that heretofore passed upon by the board and held to be ethyl chloride and there is nothing in the record now before us to lead to a different conclusion from that heretofore reached as to the proper classification of the merchandise.

The importation covered by protest 733361 was made and duty assessed thereon during the life of the tariff act of 1909. That protest correctly describes the merchandise, but it makes claim for a duty of 20 per cent ad valorem under paragraph 29 of the act of 1913. The court held in Shaw *v.* United States (122 Fed., 443) that such an error did not render a protest fatally defective, and in harmony with that ruling we hold this protest to be sufficiently specific to comply with the statute.

We find from the record that the merchandise under consideration consists of ethyl chloride and hold such of it as was imported during the life of the tariff act of 1909 to be dutiable at the rate of 30 per cent ad valorem under paragraph 21 of that act, and that which was

imported under the tariff act of 1913 to be dutiable at the rate of 20 per cent ad valorem under paragraph 29. These claims are therefore sustained, the protests being overruled in all other respects.

The decisions of the collector are modified accordingly.

(T. D. 35027.)

Abstracts of decisions of the Board of General Appraisers.

Board 1—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, Somerville, and Hay.

BEFORE BOARD 1, DECEMBER 23, 1914.

No. 37096.—IMITATION CORAL.—Protest 625649 of Albert Lorsch & Co. (New York).

SULLIVAN, *General Appraiser:* This protest is against the collector's classification of certain merchandise as manufactures of metal and paste at 45 per cent ad valorem under paragraphs 109 and 199 of the tariff act of 1909, claiming the same dutiable at 20 per cent ad valorem as imitation precious stones for use in the manufacture of jewelry under paragraph 449 of the same act. Other claims are made in the protest, but that seems to be the one relied on. At the trial the importers offered no evidence in support of their protest, merely submitting it on the appraiser's report and collector's letter.

* * * * * * *

The official sample of the merchandise consists of a pink pear-shaped article resembling coral, about five-eighths inch long by three-eighths inch in diameter, into the small end of which is inserted a short piece of brass wire.

In the matter of protests 182824, etc., of Alexander Murphy & Co. et al. (G. A. 6584; T. D. 28131) the board had before it for classification real coral, and held all coral suitable for use in the construction of jewelry dutiable as precious stones not set at the rate of 10 per cent ad valorem under paragraph 435 of the tariff act of 1897. In that case the board followed its previous holding that coral of the expensive kind susceptible of taking a high polish and usually cut by a lapidary was, in both its natural and imported condition, classified in trade and known commercially as a precious stone. See, in the matter of protest 198621 of Garreaud & Griser, G. A. 6482 (T. D. 27726).

We therefore hold that the merchandise in question is an imitation precious stone for use in the manufacture of jewelry dutiable at 20 per cent ad valorem under said paragraph 449. The protest is sustained, and the collector's action reversed.

Reliquidation will follow accordingly.

No. 37097.—GLASS TOWEL BARS.—Protests 450387, etc., of Semon, Bache & Co. (New York). Opinion by Sullivan, G. A.

Towel bars of crystal-glass rods were held dutiable as manufactures of glass under paragraph 109, tariff act of 1909, as claimed. G. A. 7076 (T. D. 30824) followed. Protests sustained in part.

No. 37098.—PARABOLIC MIRRORS.—Protests 499755½, etc., of General Electric Co. (Albany). Opinion by Sullivan, G. A.

Protests overruled as to parabolic mirrors on the authority of Abstract 36035 (T. D. 34609).

No. 87099.—IMITATION CORAL ON WIRE.—Protest 626174 of F. Wm. Gertzen Co. (New York). Opinion by Sullivan, G. A.

Imitation coral on wire which the appraiser reported may be used in the manufacture of articles of utility, such as picture frames, classified as manufactures of metal and paste under paragraphs 109 and 199, tariff act of 1909, were claimed dutiable as imitation precious stones (par. 449) or as beads (par. 421). Protest overruled.

No. 87100.—IMITATION OPALS ON WIRE.—Protest 631898 of F. Wm. Gertzen Co. (New York). Opinion by Sullivan, G. A.

Imitation opals on wire, classified under paragraphs 109 and 199, tariff act of 1909, were claimed dutiable as imitation precious stones for use in the manufacture of jewelry (par. 449). Protest overruled. Abstract 35260 (T. D. 34321) cited.

No. 87101.—JEWELS—IMITATION PRECIOUS STONES.—Protest 601615 of Guthman, Solomons & Co. (New York). Opinion by Sullivan, G. A.

Jewels consisting of paste glass forms, classified as manufactures of paste under paragraph 109, tariff act of 1909, were held dutiable as imitation precious stones (par. 449). Abstract 26470 (T. D. 31851) followed.

No. 87102.—IMITATION PRECIOUS STONES.—Protests 551237, etc., and 560665, etc., of Semon, Bache & Co. et al. (New York et al.). Opinions by Sullivan, G. A.

Protests overruled as to manufactures of glass or paste used for stove or lamp ornaments or designed to be sewn on wearing apparel, classified under paragraph 109, tariff act of 1909, and claimed dutiable as imitation precious stones (par. 449).

No. 87103.—BULL'S-EYE GLASSES.—Protest 624825 of German American Glass Co. (Philadelphia). Opinion by Sullivan, G. A.

Bull's-eye glasses used in connection with oil cups on locomotives, classified as cut glassware under paragraph 98, tariff act of 1909, were held dutiable as manufactures of glass (par. 109).

BEFORE BOARD 2, DECEMBER 23, 1914.

No. 87104.—PROTEST FEE.—Protests 756234–53888, etc., of Burley & Tyrrell Co. et al. (Chicago). Opinion by Fischer, G. A.

United States *v.* McCoy (5 Ct. Cust. Appls., —; T. D. 34445) followed as to protest fee.

No. 87105.—POST CARDS, EMBOSSED.—Protest 763862 of Wm. H. Stiner & Son (New York). Opinion by Fischer, G. A.

On the authority of United States *v.* Fuld (4 Ct. Cust. Appls., 234; T. D. 33476) embossed post cards were held dutiable as printed matter under paragraph 416, tariff act of 1909.

No. 87106.—TINSEL TRIMMINGS—BRAIDS.—Protest 742922–48699 of Marshall Field & Co. (Chicago). Opinion by Howell, G. A.

Laces and trimmings in chief value of tinsel thread, classified under paragraph 358, tariff act of 1913, were claimed to be braids, dutiable under paragraph 150. Protest overruled. G. A. 7574 (T. D. 34547) followed.

No. 87107. —BLANKETS—COTTON CLOTH.—Protest 726813 of F. Rosenstern & Co. (New York). Opinion by Cooper, G. A.

Blankets having unfinished edges, classified as cotton articles under paragraph 332, tariff act of 1909, were held dutiable as countable cotton cloth (par. 315).

No. 87108. —COUNTABLE COTTON, MERCERIZED.—Protest 727403 of J. Sachs & Co. (New York). Opinion by Cooper, G. A.

Protest sustained as to the count of threads in figured colored cotton cloth, mercerized, classified under paragraphs 315 and 323, tariff act of 1909.

No. 87109.—SURGICAL BANDAGES.—Protest 750247 of Seabury & Johnson (New York). Opinion by Cooper, G. A.

Surgical bandages classified as manufactures of cotton under paragraph 266, tariff act of 1913, were held dutiable as bandings (par. 262).

No. 87110.—FLAX FABRICS.—Protest 750653 of R. F. Downing & Co. (New York). Opinion by Cooper, G. A.

Merchandise classified as manufactures of flax under paragraph 284, tariff act of 1913, was held dutiable as plain woven fabric (par. 283). Protest sustained in part.

No. 87111.—RELIQUIDATION—FLAX PILLOW TUBING.—Protest 756773 of Rice-Stix Dry Goods Co. (St. Louis). Opinion by Cooper, G. A.

In this case the collector reliquidated an entry of flax pillow tubing in accordance with the findings of the board. This was held not a new decision against which protest will lie. G. A. 7576 (T. D. 34570) cited. Protest dismissed.

No. 87112.—COTTON TAPE.—Protest 758035 of Samstag & Hilder Bros. (New York). Opinion by Cooper, G. A.

Tape classified as flax under paragraph 278, tariff act of 1913, and found to contain cotton was held dutiable under paragraph 262, as claimed.

BEFORE BOARD 3, DECEMBER 24, 1914.

No. 87113.—POTATO STARCH.—Protest 760333-54086 of G. W. Sheldon & Co. (Chicago). Opinion by Waite, G. A.

Merchandise classified as potato starch under paragraph 234, tariff act of 1913, was claimed to be potato flour, dutiable as a nonenumerated article (par. 385). Protest overruled.

No. 87114.—WEIGHT OF MUSHROOMS.—Protest 752844 of C. B. Richard & Co. (New York). Opinion by Waite, G. A.

Protest overruled as to weight of mushrooms.

No. 87115.—BEER—CAPACITY OF BARRELS.—Protests 456088-35494, etc., of Eitel Bros. (Chicago). Opinion by Waite, G. A.

On the authority of Hollender *v.* United States (4 Ct. Cust. Appls., 406; T. D. 33850), protests overruled as to the dutiable quantity of beer in barrels.

No. 87116.—SHORTAGE—REGULATIONS.—Protest 762884 of the Raymond-Hadley Corporation (New York). Opinion by Somerville, G. A.

Protest overruled claiming shortage of flour, the collector reporting that the regulations were not complied with.

No. 87117.—SHORTAGE.—Protest 762817 of Morimura Bros. and protest 762835 of Thomas Pirone (New York). Opinions by Somerville, G. A.

Protests sustained claiming shortage.

BEFORE BOARD 1, DECEMBER 29, 1914.

No. 37118.—NOVELTY SIDING.—Protest 764127 of Canadian Pacific Railroad Co. (Portland, Me.). Opinion by McClelland, G. A.

Novelty siding classified as manufactures of wood under paragraph 176, tariff act of 1913, was held entitled to free entry under paragraph 647. G. A. 7546 (T. D. 34305) followed.

No. 37119.—SCREEN OF WOOD.—Protest 762914 of Aimone Manufacturing Co. (New York). Opinion by McClelland, G. A.

A black lacquer screen classified under paragraph 175, tariff act of 1913, was claimed dutiable as furniture of wood (par. 176). Protest overruled. Morimura *v.* United States (2 Ct. Cust. Appls., 181; T. D. 31941) followed.

No. 37120.—ENAMELED UPHOLSTERY LEATHER.—Protest 762965 of Kronfeld, Saunders & Co. (New York). Opinion by McClelland, G. A.

Merchandise classified as enameled upholstery leather under paragraph 359, tariff act of 1913, was claimed free of duty as leather not specially provided for (par. 530). Protest overruled.

No. 37121.—DRESSED FURS.—Protest 762908 of J. Wassermann & Co. (New York). Opinion by McClelland, G. A.

Merchandise classified as dressed furs under the first provision of paragraph 348, tariff act of 1913, was claimed dutiable under paragraph 439, tariff act of 1909. Protest overruled. G. A. 7569 (T. D. 34493) noted.

No. 37122.—GLASS DOOR KNOBS.—Protest 565699 of Semon, Bache & Co. (New York). Opinion by Sullivan, G. A.

Glass door knobs classified as articles composed of glass under paragraph 98, tariff act of 1909, were held dutiable as manufactures ot glass (par. 109). United States *v.* Heil (178 Fed., 537; T. D. 30492) followed.

No. 37123.—BEADS.—Protests 532437, etc., of L. P. Hollander & Co. (Boston). Opinion by Sullivan, G. A.

On the authority of Abstract 36939 (T. D. 34933), merchandise classified as manufactures of glass under paragraph 109, tariff act of 1909, was held dutiable as beads (par. 421).

No. 37124.—JEWELRY.—Protest 574445 of J. M. Gidding & Co. (New York) and protest 585420 of Robinson, Strauss & Co. (St. Paul). Opinions by Sullivan G. A.

Cohn *v.* United States (4 Ct. Cust. Appls., 378; T. D. 33536) followed as to jewelry.

No. 37125.—IMITATION JET.—Protests 589984, etc., of M. J. Corbett & Co. and protest 525960 of Dieckerhoff, Raffloer & Co. (New York). Opinions by Sullivan, G. A.

United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506) followed as to imitaon jet articles.

No. 37126.—GLASS SEIDELS.—Protest 669914 of Baltimore & Ohio R. R. Co. (Baltimore). Opinion by Sullivan, G. A.

Certain glass seidels classified under paragraph 98, tariff act of 1909, were claimed dutiable as manufactures of metal (par. 199). Protest overruled.

No. 87127.—Glass Towel Bars—Polished Plate Glass.—Protests 517043, etc., of Semon, Bache & Co. (New York). Opinion by Sullivan, G. A.

Protests overruled as to so-called polished plate glass classified under paragraph 109, tariff act of 1909. G. A. 7076 (T. D. 30824) followed as to glass towel rods or bars.

Before Board 2, December 29, 1914.

No. 87128.—Cushion Tops—Appliquéd Articles.—Protest 742905-47924 of Marshall Field & Co. (Chicago). Opinion by Howell, G. A.

Silk cushion tops, appliquéd, classified under paragraph 358, tariff act of 1913, were claimed not to be appliquéd and dutiable under paragraph 150 or 318. Protest overruled. United States *v.* Hamburger (5 Ct. Cust. Appls., —; T. D. 34382) and G. A. 7596 (T. D. 34754) followed.

No. 87129.—Jacquard Figured Goods—Towels and Quilts.—Protests 730986, etc., of A. L. Reid & Co. et al. (New York). Opinion by Cooper, G. A.

Merchandise classified as Jacquard figured manufactures of cotton under paragraph 258, tariff act of 1913, was held dutiable under the specific provision for towels and quilts (par. 264). G. A. 7609 (T. D. 34819) followed.

No. 87130.—Jute Bags, Secondhand.—Protests 763190, etc., of Z. L. White & Co. (Galveston). Opinion by Cooper, G. A.

Secondhand jute bags, stenciled, classified as manufactures of jute under paragraph 284, tariff act of 1913, were claimed dutiable as bags not printed (par. 281). Protest overruled. G. A. 7568 (T. D. 34492) followed.

No. 87131.—Cotton Gloves.—Protests 413233, etc., of Sullivan & Co. (Philadelphia). Opinion by Cooper, G. A.

Men's and boys' gloves made from knitted cotton goods cut to shape and sewn together were held properly classified under paragraph 328, tariff act of 1909, on the authority of Spielmann *v.* United States (3 Ct. Cust. Appls., 368; T. D. 32962) and Lehman *v.* United States (5 Ct. Cust. Appls., —; T. D. 34972).

Before Board 3, December 29, 1914.

No. 87132.—Nursery Stock—Spiræa.—Protest 719122 of Mattoon & Co. (San Francisco).

Waite, *General Appraiser:* The importation in this case is invoiced as "1,200 spiræa plants." They were assessed for duty under that part of paragraph 264, tariff act of 1909, which reads:

264. * * * All trees, shrubs, plants, and vines commonly known as nursery or greenhouse stock, not specially provided for in this section, twenty-five per centum ad valorem.

It is claimed by the importers that they are dutiable at 50 cents per thousand under the last part of paragraph 263, which reads:

263. * * * All other bulbs, bulbous roots, or corms which are cultivated for their flowers or foliage, fifty cents per thousand.

This plant is cultivated for its flowers or foliage. The testimony of the importer is that it is known and traded in under the name of spiræa, but that it is not really spiræa. He says its correct name is *Aruncus*, and that it is allied to the *Saxifraga* genus, and that it is also called astilbe. Astilbe is classified under paragraph 263 with "hyacinth, astilbe, dielytra, and lily of the valley clumps, two dollars and fifty cents per thousand."

We learn from works on botany that *Spiræa* is a genus which is divided into some 50 varieties, the most of them being deciduous shrubs. Some of the species, however, are perennials, and belong to what might be termed the "herbaceous group." This particular importation, according to the testimony of the importer, is the roots merely of a perennial, the growth of which above ground dies down in the fall.

While this is all interesting and might assist in determining the classification of these roots, the real question is as to whether they are "bulbs, bulbous roots, or corms." No authority has been presented which would warrant us in holding that they are either bulbs, bulbous roots, or corms. In supplying an illustrative sample, the importer stated that the one produced was exactly like the original sample which was taken from the importation. He was asked by his attorney the following question: "Are you prepared to state positively that the bulb which is here the subject of this protest was the same as the bulb from which that plant came?" His answer was, "Yes, sir; exactly; a different importation, that is all; the same class of goods." This is the only testimony in the case which sustains the contention that the importation is either a bulb, a bulbous root, or a corm. We think we are authorized in holding, from all the testimony and the facts and circumstances surrounding the case, that these goods are not bulbs. Is there anything, then, upon which we can base a finding that they are bulbous roots or corms? We think the testimony introduced on behalf of the importer does not go far enough to furnish the basis of an intelligent finding. We therefore hold he has not supported his contention. The protest is overruled.

No. 87133.—Weight of Coverings of Mushrooms—Immediate Coverings.—Protest 739357 of Wm. H. Stiner & Son (New York). Opinion by Waite, G. A.

Mushrooms packed in paper-lined wooden cases, classified under paragraph 199, tariff act of 1913, were claimed dutiable on their net weight plus the weight of immediate coverings. It was held that duty should be collected upon the weight of the paper but not on the outside packing cases, which were made of rough boards. Abstract 35593 (T. D. 34459) cited.

No. 87134.—Sweetened Biscuits.—Protest 736356 of Hawley & Letzerich (Galveston). Opinion by Waite, G. A.

Baked cakes or bread classified under paragraph 194, tariff act of 1913, were claimed free of duty as biscuits and bread not specially provided for (par. 417). They were found to contain none of the materials mentioned in paragraph 194 and held free of duty, as claimed.

No. 87135.—Ground Red Pepper.—Protests 727058, etc., of Freiria & Co. et al. (San Juan). Opinion by Waite, G. A.

Protests overruled as to ground red pepper classified under paragraph 235, tariff act of 1913. Abstract 20125 (T. D. 29429) cited.

No. 87136.—Sugar Wafers.—Protests 748078, etc., of S. S. Pierce Co. (Boston). Opinion by Waite, G. A.

G. A. 7584 (T. D. 34627) followed as to sugar wafers containing confectionery classified under paragraph 194, tariff act of 1913.

No. 87137.—Leakage of Sake.—Protest 105488 of H. Hackfeld & Co. (Honolulu). Opinion by Waite, G. A.

Protest sustained as to leakage of sake imported under the act of 1897.

No. 87138.—Bottles Containing Olive Oil.—Protest 279686-25743 of Dodge & Starkel (Chicago). Opinion by Somerville, G. A.

Protest overruled as to bottles containing olive oil on the authority of Smith *v.* United States (130 Fed., 104; T. D. 25136).

BEFORE BOARD 1, DECEMBER 31, 1914.

No. 87139.—PARABOLIC MIRRORS—LENSES.—Protest 505482 of the Carlisle & Finch Co. (Cincinnati). Opinion by Sullivan, G. A.

A parabolic mirror classified under paragraph 98, tariff act of 1909, was claimed dutiable as a projection lens (par. 108). Protest overruled. Abstract 36035 (T. D. 34609) followed.

No. 87140.—GLASS DOOR KNOBS.—Protest 572794 of Semon, Bache & Co. (New York). Opinion by Sullivan, G. A.

Glass door knobs classified as blown glass under paragraph 98, tariff act of 1909, were held dutiable as manufactures of glass (par. 109). United States *v.* Heil (178 Fed., 537; T. D. 30492) followed.

No. 87141.—DECORATED GLASSWARE—WATER SETS.—Protests 635369, etc., of Butler Bros. (St. Louis). Opinion by Sullivan, G. A.

Abstract 34659 (T. D. 34165) followed as to water sets in baskets held properly classified as decorated glassware under paragraph 98, tariff act of 1909.

No. 87142.—JEWELRY.—Protests 579064, etc., of B. Altman & Co., and protest 590608 of G. W. Sheldon & Co. (New York). Opinions by Sullivan, G. A.

Hatpins composed of brass and set with imitation precious stones were held dutiable as jewelry under paragraph 448, tariff act of 1909. Cohn *v.* United States (4 Ct. Cust. Appls., 378; T. D. 33536) followed.

BEFORE BOARD 2, DECEMBER 31, 1914.

No. 87143.—CHINESE SLIPPERS—EMBROIDERED COTTON WEARING APPAREL.—Protests 750169, etc., of Wm. A. Brown & Co. (New York). Opinion by Cooper, G. A.

Protests overruled as to Chinese slippers classified as cotton wearing apparel and embroidered wearing apparel under paragraphs 256 and 358, respectively, tariff act of 1913. Krusi *v.* United States (1 Ct. Cust. Appls., 168; T. D. 31213) cited.

No. 87144.—STRAW SLIPPERS.—Protests 755479, etc., of Wm. A. Brown & Co. et al. (New York). Opinion by Cooper, G. A.

Slippers composed of straw and lined with cotton terry cloth, classified as cotton wearing apparel under paragraph 324, tariff act of 1909, and paragraph 256, tariff act of 1913, were held dutiable as manufactures of straw (par. 463, tariff act of 1909, and par. 368, tariff act of 1913).

BEFORE BOARD 3, DECEMBER 31, 1914.

No. 87145.—UMEBOSHI—UMEZUKE—FRUIT IN BRINE.—Protests 719130, etc., of North American Mercantile Co. et al. (San Francisco).

WAITE, *General Appraiser;* The commodity in these importations is variously described as salted fruit, umeboshi, or umezuke. It is reported by the collector as "plums in brine of salt." Two names apparently are given to the different commodities—the one is "umezuke" and the other "umeboshi." They differ slightly in that the umezuke has apparently something in it besides the fruit known as ume; just what it is we do not know. They are both in liquid when imported, and more or less colored in these cases, the color being due to the presence of certain leaves and perhaps from a slight amount of aniline color.

The importations were assessed under paragraph 274, tariff act of 1909, as fruits preserved in their own juices, and are claimed to be free of duty under paragraph 571 as fruits in brine.

The importers apparently rely upon decision of the Court of Customs Appeals in Sakai *v.* United States (5 Ct. Cust. Appls., —; T. D. 34196), which passed upon a commodity of the same name. There is no proof, however, that the merchandise in question here is identical with that in the case decided by the court. From a description, however, it would appear they are practically the same, being the fruit of the ume tree, a fruit resembling plums of different sizes. There is undoubtedly some juice of the fruit in the liquid surrounding it, but we are of the opinion that the testimony shows the most of the liquid to be water containing salt, or what may be termed "brine." One of the Government's witnesses, the chemist or analyst, states that the preservative element is salt and water. We are not advised just what percentage of salt has been placed in these goods, but the evidence is clear that commodities of this description have been uniform for a number of years.

When the case above cited was before the board, a distinction was made by the board between commodities of this kind in salt and water and in their own juice from such fruits, as, for instance, cherries, which are put in a brine for purposes of temporary preservation during transportation, the salt being afterwards washed out and a different commodity made of the cherries, the reason for this distinction being found in the fact that the merchandise of the character now before the board is permanently prepared, the fruit is eaten in its imported condition as a relish or pickle. It being so permanently prepared we are of the opinion that it becomes dutiable as a prepared fruit as distinguished from the class of fruits which are temporarily preserved by means of brine. See Abstract 33522 (T. D. 33732), which followed G. A. 7406 (T. D. 32979). The court, however, did not take this view. From the record we are of the opinion that this case should be governed by the decision in Sakai *v.* United States, *supra*. The protests are therefore sustained, admitting the umeboshi and umezuke free of duty.

No. 37146.—Alabaster Lamp—Sculptures.—Protest 731057 of Ferdinand Bing & Co.'s Succs. (New York).

A lamp classified as a manufacture of alabaster under paragraph 98, tariff act of 1913, was claimed dutiable as sculptures (par. 376).

Waite, *General Appraiser:* * * * An inspection of what is proved to be a photograph of the article shows it to be an alabaster bowl, intended to be used suspended from the ceiling, in which a light is placed. It is elaborately carved with human figures, horses, and conventional designs.

In order to be admissible under paragraph 376 two things at least must be shown: That it is sculpture and, necessarily, a work of art. As we have previously held, a photograph is very weak evidence of the artistic qualities of an article. We are loath to hold from the evidence before us that it is a work of art. The case for the importers is weakened by the fact that this article is admitted to have a utilitarian purpose. Without deciding, however, whether it may be considered a work of art within the meaning of this paragraph notwithstanding that purpose, we conclude that the importers have not overcome the presumption of correctness which attaches to the finding of the collector. We therefore overrule the protest.

Decisions on Applications for Rehearings.

No. 37147.—Rehearing Granted—Spangles.—Protest 752411 of Gage Bros. & Co. Decided Nov. 18, 1914. December 14, 1914.

No. 37148.—Rehearing Granted—Articles of Personal Adornment.—Protests 518184, etc., of Cohn & Rosenberger. Abstract 36845 (T. D. 34908). December 14, 1914.

No. 87149.—Rehearing Granted—Aluminum.—Protest 740023 of Guiterman, Rosenfeld & Co. Decided Nov. 30, 1914. December 22, 1914.

No. 87150.—Rehearing Granted—Fishing Tackle.—Protest 757197 of Dame, Stoddard Co. Decided Nov. 30, 1914. December 22, 1914.

No. 87151.—Rehearing Granted—Tennis Nets.—Protest 730564 of Wright & Ditson. Abstract 36875 (T. D. 34920). December 28, 1914.

No. 87152.—Rehearing Granted—Jacquard Figured Goods.—Protests 740045, etc., of C. B. Richard & Co. Abstract 36975 (T. D. 36969). December 28, 1914.

INDEX.

Subject.	Dept. No.	G. A. No.
A.		
Abandonment; nonimportation; broken statue (Abstract 36580)	34789	
Abolishment of customs forms	34883	
Abrasives; powdered glass; waste	34628	7585
Acid containers; iron drums (Abstract 36459)	34763	
Accordions:		
Musical instruments; toys (Abstract 36824)	34889	
Toys (Abstract 36937)	34933	
Additional duty:		
Jurisdiction of appraiser	34726	7595
Regulations (Abstract 36274)	34704	
Adhesive pastes and liquid glue, National Gum & Mica Co., New York, drawback on	34682	
Advertising matter (Roger & Gallet *v.* United States)	34973	
Advertising pencils (Abstract 36564)	34789	
Advertising signs or placards and show cards	34860	7620
Affidavits; regulations; artistic antiquities (Abstract 36835)	34889	
Agate beads; button blanks (American Bead Co. *v.* United States)	35001	
Agate guides; amethyst beads (Abstract 36083)	34629	
Agricultural implements (Abstract 36947)	34933	
Aigrettes, grass imitation (Abstract 36526)	34774	
Alabaster lamp; sculptures (Abstract 37146)	25027	
Alabaster sculptures (Abstract 37019)	34984	
Algor gum (Abstract 36302)	34727	
Allowance for decay; fruit, etc	34737	
Almond oil; apricot kernel oil (Abstract 36903)	34933	
Almonds:		
Habicht, Braun & Co., New York, drawback on	34723	
Sweet; oils (Abstract 37052)	35000	
Aluminum (Abstract 36987)	34969	
Aluminum and welding compounds, Goldschmidt Thermit Co., New York, drawback on	35012	
Aluminum in sheets:		
Abstract 36215	34677	
Abstract 36270	34704	
Aluminum circles (Abstract 36158)	34668	
Alum rolls (Abstract 36960)	34969	
Amber beads (Abstract 36634)	34810	
Amber jewelry (Abstract 36435)	34756	
Amended protest; insulators (Abstract 37025)	34984	
Amendment of section 195, act of March 3, 1911; judiciary; appeals to Supreme Court	34747	
American goods returned	34650	7586
Abstract 36306	34727	
Abstracts 36174 and 36196	34668	
Abstracts 37012, 37013, and 37030	34984	
Appeal from G. A. 7586	34760	
Entireties (Abstract 36096)	34629	

Subject.	Dept. No.	G. A. No.
American goods returned—Continued.		
Iron drums (Abstract 37047)	35000	
Phonograph disks (Abstract 36729)	34865	
Regulations (Abstract 36862)	34908	
Shooks (Abstract 36795)	34871	
American-Hawaiian Steamship Co., bond of, as common carrier	34671	
Amethyst beads; agate guides (Abstract 36083)	34629	
Angora goat hair; wool (Abstract 36153)	34668	
Animals in alcohol (Abstract 36442)	34756	
Anthracene oil, free of duty under act of 1913	34750	
Antimony ware, plated	34651	7587
Antipasto; fish in tins (Abstract 36828)	34889	
Antique bureau (Abstract 36119)	34652	
Antique desk (Abstract 36990)	34969	
Antique furniture (Abstract 36956)	34933	
Antique oak mantelpiece (Abstract 36834)	34889	
Antique velvet (Abstract 36295)	34704	
Antiquities, artistic. (*See* Artistic antiquities.)		
Appeal to reappraisement, validity of	34809	7605
Appeals; appraisement:		
Act of 1913	34996	7648
Reports to accompany	34989	
Reappraisement; act of 1913	34996	7648
Appeals from decisions of Board of General Appraisers:		
Brass neck chains, gun-metal hatpins, etc., Abstract 35405 (T. D. 34416)	34647	
Caustic potash (G. A. 7565)	34616	
China sheep's wool, Abstract 35843 (T. D. 34548)	34645	
Colored glass cubes or mosaics, Abstract 36586 (T. D. 34789)	34909	
Crash toweling (G. A. 7608)	34950	
Equipment of vessels, transfer of (G. A. 7639)	35022	
Hedge shears (G. A. 7588)	34768	
Jacquard woven cotton cloth (G. A. 7618)	34949	
Knitted silk mufflers, Abstract 36162 (T. D. 34668)	34762	
Lentils; dried pease, Abstract 36851 (T. D. 34908)	34956	
Lumber, beaded, and novelty siding, Abstract 36067 (T. D. 34629)	34661	
Modeling clay, Abstract 36458 (T. D. 34763)	34849	
Pine cones, Abstract 36255 (T. D. 34698)	34793	
American goods returned (G. A. 7586)	34760	
Semicircular plates for making iron piles, Abstract 35945 (T. D. 34571)	34706	
Show cards (G. A. 7620)	34896	
Silk hair nets, Abstract 36066 (T. D. 34629)	34743	
String beans in brine, Abstract 36166 (T. D. 34668)	34732	
Tucked shirt bosoms (G. A. 7613)	34856	
Umbrella handles; boxwood sticks, Abstract 36342 (T. D. 34742)	34837	
Wafers, biscuits, and cakes (G. A. 7584)	34738	
Wheat products, Abstract 36813 (T. D. 34871)	35013	
Appetitsild (Abstract 36076)	34629	
Appliquéd articles:		
Abstracts 36499, 36500, and 36540	34774	
Cushion tops (Abstract 37128)	35027	
Appliquéd mousseline bands (Abstract 36887)	34920	
Appliquéd silk:		
Abstract 36864	34908	
Value (Abstract 36134)	34652	
Wearing apparel (Abstract 36743)	34865	
Appliquéd wearing apparel:		
Abstract 36415	34756	
Abstracts 36998 and 37008	34984	

Subject.	Dept. No.	G. A. No.
Appraisement:		
Appeals, reports to accompany	34989	
Dies	34660	
Appraiser, jurisdiction of. (*See* Jurisdiction.)		
Appraisers' returns	34992	
Apricot kernel oil; almond oil (Abstract 36903)	34933	
Arms and munitions of war; Mexico	34758	
Aromatic substance; crude gum benzoin (Abstract 36876)	34920	
Articles for institutions; free entry	34980	
Articles made in part of braid	34754	7596
Articles made on Lever machine (Abstract 36454)	34763	
Articles of personal adornment (Abstract 36422)	34756	
Articles under bond; certificates	34702	
Artificial flowers:		
Abstract 36551	34789	
Abstract 37070	35000	
Abstracts 36837 and 36838	34908	
Boutonnières (Abstract 36703)	34845	
Feather articles (Abstract 36629)	34810	
Artificial leather, O'Bannon Corporation, Boston, Mass., drawback on	34880	
Artificial silk (Abstract 36563)	34789	
Artificial silk hats:		
Abstract 37006	34984	
Trimmed hats (Abstract 36313)	34727	
Artificial silk ornaments; ladies' scarfs (Abstract 36245)	34698	
Artificial silk ribbons (Abstract 36317)	34727	
Artificial silk, Teschemacher Co., New York, drawback on	34960	
Artificial silk trimmings (Abstract 36949)	34933	
Artistic antiquities:		
Abstract 36081	34629	
Abstract 36237	34677	
Abstract 36250	34698	
Abstract 36599	34789	
Abstract 36671	34824	
Abstract 37089	35020	
Abstracts 36280 and 36294	34704	
Abstracts 36508 and 36511	34774	
Abstracts 36853 and 36861	34908	
Regulations; affidavits (Abstract 36835)	34889	
Artists' colors; paints (Abstract 37080)	35020	
Asafetida; T. D. 31097 revoked	34708	
Astrakhans; pile fabrics (Abstract 36495)	34774	
Automobile and motor-truck springs, Perfection Spring Co., Cleveland, Ohio, drawback on	34987	
Automobile axles, American Ball Bearing Co., Cleveland, Ohio, drawback on	34801	
Automobile axles and gears, Yuster Axle Co., Cleveland, Ohio, drawback on	34835	
Automobile axles, Hess Spring & Axle Co., Cincinnati, Ohio, drawback on	34851	
Automobile chassis, Mercedes Repair Co., New York, drawback on	34964	
Automobile clocks and chronodometers, E. C. Meyer, Cleveland, Ohio, drawback on	34715	
Automobile hoods, Michigan Stamping Co., Detroit, Mich., drawback on	34796	
Automobile tops, American Top Co., Jackson, Mich., drawback on	34797	
Automobiles:		
Ford Motor Co., Detroit, Mich., drawback on	34953	
Studebaker Corporation, Detroit, Mich., drawback on	34776	
Touring; consular certificates	34757	
Wind shields, Universal Wind Shield Co., Chicago, Ill., drawback on	34803	

Subject.	Dept. No.	G. A. No.
Automobiles and automobile trucks, Peerless Motor Car Co., Cleveland, Ohio, drawback on	35010	
Automobiles and parts:		
Abbott Motor Car Co., Detroit, Mich., drawback on	34802	
Baker Motor Vehicle Co., Cleveland, Ohio, drawback on	34833	
Chandler Motor Car Co., Cleveland, Ohio, drawback on	34832	
J. M. Quinby & Co., Newark, N. J., drawback on	34654	
Lozier Motor Co., Detroit, Mich., drawback on	34805	
Packard Motor Car Co., Detroit, Mich., drawback on	34852	
Pierce-Arrow Motor Car Co., Buffalo, N. Y., drawback on	34895	
T. B. Jeffrey Co., Kenosha, Wis., drawback on	34911	
Avanturine; gold stone (Abstract 36971)	34969	
B.		
Badges, Salvation Army (Abstract 36802)	34871	
Baggage declaration; time of filing protest	34696	7593
Baggage entries; emergency revenue law	34995	
Baggage forwarded in bond	34882	
Bagging, jute. (*See* Jute bagging.)		
Bags, beaded (Abstract 36942)	34933	
Balbuse gum, so-called	34897	
Ball bearings, parts of:		
Abstract 36535	34774	
Aligning seats; washers (Abstract 37073)	35000	
Bamboo, split. (*See* Split bamboo.)		
Barley:		
Abstract 36757	34865	
Screenings (Abstract 36236)	34677	
Bars, bands or strips, and plates of steel	34694	
Basket bags:		
Abstract 36092	34629	
Abstract 36321	34727	
Basket trays (Abstract 36466)	34763	
Baskets:		
Manufactures of wood (Abstract 36967)	34969	
Sewing; sufficiency of protest (Abstract 36481)	34763	
Willow (Abstract 36480)	34763	
Bass fiber (Abstract 37094)	35020	
Bassine; vegetable fiber (Abstract 36986)	34969	
Bath tablets; toilet articles (Abstract 36895)	34920	
Beaded articles:		
Abstract 36408	34756	
Toys (Abstract 36150)	34668	
Beaded bags:		
Abstract 36179	34668	
Abstract 36426	34756	
Abstract 36942	34933	
Abstract 36973	34969	
Beaded lumber; novelty siding (Abstract 36067)	34629	
Beaded trimmings (Abstract 36651)	34824	
Beads:		
Abstract 36410	34756	
Abstract 36560	34789	
Abstract 37038	35000	
Abstract 37123	35027	
Abstracts 36933 and 36939	34933	
Beads; imitation precious stones:		
Abstract 36082	34629	
Abstract 36982	34969	
Abstract 37071	35000	
Abstracts 36993, 37001, and 37015	34984	

Subject.	Dept. No.	G. A. No.
Beads, strung. (*See* Strung beads.)		
Bean cake (Abstract 36190)	34668	
Beans, damaged; nonimportation (Abstract 36289)	34704	
Beans in tins and jars (Abstract 36712)	34845	
Beans, pease, and mushrooms in tins (Abstract 36620)	34810	
Beaver board, Beaver Board Co., Buffalo, N. Y., drawback on	34966	
Beds, cribs, etc., Simmons Manufacturing Co., Kenosha, Wis., drawback on	34792	
Beer; capacity of barrels (Abstract 37115)	35027	
Belting leather; sufficiency of protest	34807	7603
Belts and ornaments, metal (Abstract 36932)	34933	
Bentwood furniture, Thonet Bros., New York, drawback on	34954	
Berry baskets (Abstract 36682)	34824	
Betanaphthol (Abstract 36071)	34629	
Bicycle handle grips; pyroxylin (Abstract 36592)	34789	
Bicycle lamps, lenses for (Abstract 36927)	34933	
Bills of health; vessels to Canal Zone	34759	
Binder twine, Peoria Cordage Co., Peoria, Ill., drawback on	34688	
Biscuits:		
Appeal from G. A. 7584	34738	
Coverings of (Abstract 36483)	34763	
Sweetened. (*See* Sweetened biscuits.)		
Wafers; confectionery	34627	7584
Blankets:		
Cotton cloth (Abstract 37107)	35027	
Wool (Abstract 36913)	34933	
Wool rugs (Abstract 36896)	34920	
Bleaching soda; chemical compound (Abstract 36763)	34871	
Blinds of wood; shutters; screens (Abstract 37053)	35000	
Blown glassware (Abstract 36930)	34933	
Board of General Appraisers:		
Dockets for hearings by	34967	
Finality of decision of	34666	7589
Rules of procedure and practice	34649 34683	
Board of General Appraisers, decisions of:		
Additional duty	34726	7595
American goods returned	34650	7586
Articles made in part of braid	34754	7596
Belting leather; sufficiency of protest	34807	7603
Bond, validity of; certified invoice	34999	7651
Bottle caps of metal, decorated	34844	7617
Braids in chief value of india rubber	34887	7626
Camera tripods	34998	7650
Clothing in part of braid	34755	7597
Colored catgut	34907	7634
Cork disks	34786	7600
Cotton cloth, woven figured	34858	7618
Cotton table damask	34903	7630
Cotton towels woven on Jacquard looms	34819	7609
Coverings	34676	7592
Decorated sprinkler tops; trade-marks	34888	7627
Drawnwork	34918	7637
Embroidered hosiery	34930	7644
Entry by pro forma invoice	34999	7651
Ethyl chloride	35026	7658
Fancy metal pencils	34870	7625
Finality of board's decision	34666	7589
Fish in tins	34788	7602
Forceps, nippers, and pliers	35018	7655
Furniture covered with cotton velvet	34901	7628
Fustin; extract of vegetable origin	34821	7611

Subject.	Dept. No.	G. A. No.
Board of General Appraisers, decisions of—Continued.		
Glove leather	34861	7621
Hedge shears	34665	7588
Isotonique sea water	34864	7624
Jute-thread waste	35015	7652
Lambrequins	34968	7647
Lithographic print of oil painting on cotton cloth not a work of art	34929	7643
Mirrors; pyroxylin articles	34919	7638
Mixture of goods; separation	34843	7616
Mohair waste	34997	7649
New trials in reappraisement cases before a single general appraiser	34785	7599
Orchil	34817	7607
Personal effects	34931	7645
Plain woven fabrics	34818	7608
Plaster of Paris casts of sculpture; models	34905	7632
Plated antimony ware	34651	7587
Powdered glass; abrasives; waste	34628	7585
Printing machines; printing presses	34841	7614
Protest fee	34926 34927	7640 7641
Radiogen-Trinkwasser; radium bromide in water	34863	7623
Rattan, split; act of 1913	34932	7646
Reappraisement	34808 34842 34859 34902	7604 7615 7619 7629
Reappraisement appeals; act of 1913	34996	7648
Reliquidation at increased valuation	34917	7636
Rotten fruit; act of 1909	34822	7612
Rugs	34816	7606
Ship's equipment	34925	7639
Shoe buttons	34784	7598
Show cards or advertising signs, cardboard chief value	34860	7620
Soluble or chemically treated starch	34906	7633
Spanish red peppers or pimentos	34667	7590
Stained or painted glass windows for house of worship	34928	7642
Steel window sashes and frames	34675	7591
Straw rugs	34820	7610
Stuffed chicks and ducklings	35016	7653
Tagua nut slabs	34862	7622
Time of filing protest	34696	7593
Tissue paper; wrapping paper	34904	7631
Trinitrotoluol	34787	7601
Tucked wearing apparel	34823	7613
Tunny fish; mackerel	34916	7635
Turkish towels	35019	7656
Validity of appeal to reappraisement	34809	7605
Wafers; biscuits, confectionery	34627	7584
Waverly shortbread; similitude	35017	7654
Wire staples	35025	7657
Wrought earth	34697	7594
Bond, validity of; certified invoice	34999	7651
Bonded manufacturing warehouse:		
Cigars made in	34923	
Customs stamps for cigars	34659	
Bonded smelters; lead wastage	34990	
Bonds, surety, etc., stamp tax on, act of Oct. 22, 1914	34910 34979	
Bone jewelry (Abstract 36426)	34756	

Subject.	Dept. No.	G. A. No.
Bones; clerical error. (*See* Clerical error.)		
Bookcases, Gunn Furniture Co., Grand Rapids, Mich., drawback on	34775	
Book covers lithographically printed (Abstract 36694)	34824	
Books in foreign languages (Abstract 36667)	34824	
Books, marking of; country of origin	34994	
Bottle-cap machines; machine tools (Abstract 36695)	34824	
Bottle caps of metal, decorated	34844	7617
Abstract 36917	34933	
Bottle covers and caps of palm leaf (Abstract 36970)	34969	
Bottle stoppers, Interstate Bottle Stopper Co., New York, drawback on	34655	
Bottled Fellows compound sirup of hypophosphites, Fellows Medical Manufacturing Co., New York, drawback on	34894	
Bottles containing olive oil (Abstract 37138)	35027	
Bottles of whisky, shortage of (Abstract 36517)	34774	
Bouillon cubes (Abstract 36247)	34698	
Boutonnières; artificial flowers (Abstract 36703)	34845	
Box straps, De Haven Manufacturing Co., New York, drawback on	34733 34770	
Boxwood sticks; umbrella handles; appeal from Abstract 36342 (T. D. 34742)	34837	
Bracelets, pyroxylin (Abstract 36801)	34871	
Braid:		
Articles made in part of	34754	7596
Clothing in part of	34755	7597
Edgings and insertings (Abstract 36357)	34742	
Goodman Bros. & Hinlein, Philadelphia, Pa., drawback on	35009	
L. B. Simonds & Co., New York, drawback on	34621	
Straw (Abstract 37005)	34984	
Tinsel trimmings (Abstract 37106)	35027	
Braids in chief value of india rubber	34887	7626
Bran; similitude clause (Abstract 36138)	34652	
Brass fasteners; millinery ornaments (Abstract 36263)	34704	
Brass neck chains, gun-metal hatpins, etc.; appeal from Abstract 35405 (T. D. 34416)	34647	
Brass snaps for necklaces; jewelry (Abstract 36730)	34865	
Brass-wire cloth (Abstract 36214)	34677	
Braunstein grob; oxide of manganese (Abstract 36912)	34933	
Breakage; cordials in bottles (Abstract 36364)	34742	
Breaking locks on trunks; passengers' baggage	34804	
Bridal veils in part of Lever lace (Abstract 36386)	34742	
British spirits; countervailing duty	34752	
Broken flax straw (Abstract 36502)	34774	
Bronze and ivory statue; sculptures (Abstract 36225)	34677	
Bronze castings (Abstract 36762)	34865	
Bronze-wire articles (Abstract 36111)	34652	
Bronze-wire cloth (Abstract 36534)	34774	
Brooches and pendants; toys (Abstract 36284)	34704	
Brush with phosphor-bronze bristles (Abstract 37023)	34984	
Brushes, jewelry; brushes of wire (Abstract 36472)	34763	
Buckles or slides, metal (Abstract 36878)	34920	
Buff leather in strips (Abstract 36553)	34789	
Bull's-eye glasses (Abstract 37103)	35027	
Bungo sulphur (Abstract 36622)	34810	
Burgundy pitch (Abstract 36723)	34865	
Burlap bags; paper stock (Abstract 36673)	34824	
Burning colza oil, Union Petroleum Co., Philadelphia, Pa., drawback on	34830	
Button blanks:		
Agate beads (American Bead Co. *v.* United States)	35001	
Imitation precious stones (Abstract 36848)	34908	

Subject.	Dept. No.	G. A. No.
Buttons:		
Abstract 36362	34742	
Beads; spangles (Abstract 37038)	35000	
Glass and fish scale (Abstract 37077)	35000	
Lace ornaments (Abstract 36187)	34668	
Butzen, glass (Abstract 36424)	34756	
C.		
Cabinet wood; Spanish cedar (Abstract 37058)	35000	
Cabochons; millinery ornaments; manufactures of mother-of-pearl (Abstract 36931)	34933	
Calendars, lithographically printed (Abstract 36125)	34652	
Calfskins, dressed and finished (Abstract 36554)	34789	
Calomel in 1-pound packages (Abstract 36156)	34668	
Camera tripods	34998	7650
Camphor, refined, in tablets	34612	
Canada, cattle, sheep, etc., from	34900 34952	
Canadian reciprocity; paper:		
Abstract 36299	34704	
Abstracts 36577, 36601, and 36606	34789	
Canadian reciprocity; wood pulp:		
Abstract 36194	34668	
Abstract 36226	34677	
Abstracts 36430 and 36445	34756	
Canal Zone, vessels to; bills of health	34759	
Cancellation of customhouse broker's licenses	34857	
Candies, Package Confectionery Co., Boston, Mass., drawback on	34791	
Canned peppers (Abstract 36297)	34704	
Cans and attachments, Tidewater Oil Co., New York, drawback on	34772	
Capacity of barrels:		
Beer (Abstract 37115)	35027	
Stout (Abstract 36514)	34774	
Capacity of sardine tins (Abstract 36079)	34629	
Carbosolite, duty on, under act of 1913	34885	
Card cloth (Abstract 37064)	35000	
Card clothing grinding machines (Abstract 37074)	35000	
Card form of manifest for in-transit shipments	34853	
Cargoes, outward, giving out information concerning	34868	
Carmelite ware; reliquidation (Abstract 36373)	34742	
Cartage; charges (Abstract 36121)	34652	
Castanets; musical instruments (Abstract 36432)	34756	
Castings, advanced:		
Abstract 36696	34824	
Machine parts (Abstract 36995)	34984	
Castor oil, drawback on	34879	
Catgut:		
Abstract 36963	34969	
Colored	34907	7634
Catgut or whip gut (United States *v.* Sheldon & Co.)	34944	
Catgut strings (Abstract 37067)	35000	
Cattle from Canada	34900 34952	
Cattle hair cloth and zibeline or ripple cloth	34624	
Caustic potash; appeal from G. A. 7565	34616	
Celluloid bracelets:		
Jewelry (Abstract 36688)	34824	
Pyroxylin jewelry (Abstract 36565)	34789	
Central Railroad Co. of New Jersey, bond of, as common carrier	34893	
Cereal meal; vegetable albumen (Abstract 36813)	34871	
Certificate of depreciation; value of currency (Abstract 36888)	34920	

Subject.	Dept. No.	G. A. No.
Certificates:		
Articles under bond	34702	
Exportation of domestic merchandise	35014	
Ownership; emergency revenue law	34991	
Certificates of origin, Philippine	34749	
Certification of invoices	34611	
Chain links; platinum wire (Abstract 36375)	34742	
Chain-making machines (Abstract 36213)	34677	
Chain-making machines; machine tools:		
Abstract 36159	34668	
Abstract 36740	34865	
Abstracts 36918 and 36945	34933	
Chain swivels (Abstract 36946)	34933	
Chains:		
Long; jewelry (Abstract 36557)	34789	
Sprocket (Abstract 36332)	34742	
Chalk, red (Abstract 36905)	34933	
Chamois skins (Abstract 36680)	34824	
Charges; cartage (Abstract 36121)	34652	
Chatelaines (Abstract 36433)	34756	
Cheese, weight of. (*See* Weight.)		
Chemical compound:		
Bleaching soda (Abstract 36763)	34871	
Mineral wax (Abstract 36208)	34677	
Nickel sulphate (Abstract 36829)	34889	
Chemical glassware:		
Abstract 36434	34756	
Abstract 36825	34889	
Chemical mixture; mineral wax (Abstract 36773)	34871	
Chemical or medicinal compounds (Abstract 36806)	34871	
Cheroots, cigars, and cigarettes; Philippine Islands	34630	
Cherries in brine; sulphur fumes (Abstract 36645)	34810	
Chewing gum, Wm. Wrigley, jr., Co., Chicago, Ill., drawback on	34637	
Chicks and ducklings, stuffed	35016	7653
Chicory, H. Franck Sons (Inc.), Flushing, N. Y., drawback on	34854	
Children's pinafores, printed cloth for	34670	
Child's crib; household effects (Abstract 36258)	34698	
China sheep's wool; appeal from Abstract 35843 (T. D. 34548)	34645	
Chinese lamp founts and lamp case shooks, Standard Oil Co., New York, drawback on	34838	
Chinese slippers; embroidered cotton wearing apparel (Abstract 37143)	35027	
Christmas seals (Gibson Art Co. *v.* United States)	34876	
Cigarette tips, Boucher Cork & Machine Co., New York, drawback on	34878	
Cigarette machines, American Machine & Foundry Co., New York, drawback on	34680	
Cigarettes, Starr & Reed, Philadelphia, Pa., drawback on	34736	
Cigar stamps, customs, cost of	34815	
Cigars, cheroots, and cigarettes; Philippine Islands	34630	
Cigars made in bonded manufacturing warehouse, customs stamps for	34659 34923	
Circular tiles; measurement (Abstract 36924)	34933	
Circulars and circular letters, regulations governing	34613	
Civil-service rules; removals in classified service	34728	
Clay, modeling. (*See* Modeling clay.)		
Clearance of vessels; neutrality. (*See* Vessels.)		
Clerical error:		
Abstract 36101	34629	
Abstract 36228	34677	
Abstract 36372	34742	
Abstract 37026	34984	
Abstract 37093	35020	

Subject.	Dept. No.	G. A. No.
Clerical error—Continued.		
Abstracts 36484 and 36485	34763	
Bones (Abstract 36259)	34698	
Clocks, small; toys (Abstract 36567)	34789	
Cloth, cattle hair, and zibeline or ripple cloth	34624	
Clothing in part of braid	34755	7597
Clothing, Kuppenheimer & Co., Chicago, Ill., drawback on	34719	
Coal-tar bases (Abstract 36807)	34871	
Coal-tar colors (Abstract 36155)	34668	
Coal-tar preparation (Abstract 37063)	35000	
Cocaine hydrochloride, Merck & Co., New York, drawback on	34829	
Cocolado; coconut oil (Abstract 36282)	34704	
Codfish in wooden packages (Abstract 36872)	34920	
Coffee compound (Abstract 36241)	34677	
Coffee; Porto Rico	34672	
Coins, foreign, values of	34610 34658 34799	
Colored catgut	34907	7634
Colored cotton cloth (Abstract 36503)	34774	
Colored cotton yarn (Abstract 36456)	34763	
Colored glass cubes or mosaics; appeal from Abstract 36586 (T. D. 34789)	34909	
Colors; oxide of chromium (Abstract 37081)	35020	
Comfortable, silk, appliquéd (Abstract 36744)	34865	
Commissions:		
Abstract 36859	34908	
Duress (Abstracts 36291 and 36292)	34704	
Common carrier, bond of:		
American-Hawaiian Steamship Co	34671	
Central Railroad Co. of New Jersey	34893	
Duluth, Missabe & Northern Railway Co	34731	
Erie & Western Transportation Co	34767	
Insular Line	34673	
Luckenbach Steamship Co. (Inc.)	34778	
Minnesota, Dakota & Western Railway Co	34623	
Northern Central Railway Co	34766	
Ryan Elevator & Forwarding Co	34709	
San Diego & Arizona Railway Co	34771	
Seattle & International Railway Co	34977	
Texas-Mexican Railway Co	34915	
Trinity & Brazos Valley Railway Co	34711	
Western Steam Navigation Co	34957	
Compass watch charms (Abstract 36151)	34668	
Compasses:		
Classification of, under act of 1913	34783	
Small (Susfeld, Lorsch & Co. *v.* United States)	34875	
Compensation of customs officers	34729	
Compliance with regulations; rotten onions; notice (Abstract 36251)	34698	
Condensed milk:		
Libby, McNeill & Libby, Chicago, Ill., drawback on	34847	
Wisconsin Condensed Milk Co., Burlington, Wis., drawback on	34921	
Condensers for steam boilers, Alberger Pump & Condenser Co., New York, drawback on	34867	
Condensers; lenses (Abstract 36926)	34933	
Confectionery:		
Spearmint lozenges (Abstract 36278)	34704	
Wafers; biscuits	34627	7583
Consolidated entry; stamp tax	34978	
Consolidation of customs districts Nos. 2 and 3	34951	
Construction of statute; wrought earth	34697	7594

Subject.	Dept. No.	G. A. No.
Consular certificates; touring automobiles	34757	
Consuls, correspondence with	34826	
Copaiba, Dodge & Olcott Co., New York, drawback on	34626	
Copper matte (United States *v.* American Smelting & Refining Co.)	34937	
Coral, imitation (Abstracts 37096 and 37099)	35027	
Cordials in bottles; breakage (Abstract 36364)	34742	
Cords and loops, B. Ulmann & Co., New York, drawback on	34812	
Cords and webbings, elastic. (*See* Elastic cords and webbings.)		
Cork bark unmanufactured (United States *v.* Johns-Manville Co. and United States *v.* Armstrong Cork Co.)	34939	
Cork disks, classification of, under act of 1909	34786	7600
Cork waste (Abstract 36193)	34668	
Coronation cord (Abstract 36324)	34727	
Correspondence with consuls	34826	
Corrosive sublimate; mercurous preparations (Abstract 36154)	34668	
Corsets, Corset H. Co., Worcester, Mass., drawback on	34773	
Cotton articles (Abstracts 36750 and 36752)	34865	
Cotton bandings (Abstract 36721)	34865	
Cotton braid, picot or loop thread (Abstract 36746)	34865	
Cotton cloth:		
Abstract 36975	34969	
Abstract 37016	34984	
Abstracts 36831 and 36832	34889	
Blankets (Abstract 37107)	35027	
Colored (Abstract 36503)	34774	
Jacquard woven; appeal from G. A. 7618	34949	
Size of yarn (Abstract 36787)	34871	
Woven figured	34858	7618
Cotton couch covers (Abstract 36087)	34629	
Cotton dress goods; pile fabrics (Abstract 36496)	34774	
Cotton gloves (Abstract 37131)	35027	
Cotton ornaments; crochet balls (Abstract 36117)	34652	
Cotton piece goods, Pond Lily Co., New Haven, Conn., drawback on	34831	
Cotton table damask	34903	7630
Cotton tie buckles, old (Abstract 36537)	34774	
Cotton towels woven on Jacquard looms	34819	7609
Cotton velvet:		
Abstract 36093	34629	
Furniture covered with	34901	7628
Cotton waste (Abstract 37010)	34984	
Cotton wearing apparel in part of Lever lace:		
Abstract 36313	34727	
Abstract 36385	34742	
Abstract 36417	34756	
Cotton yarns, L. Littauer, New York, drawback on	34981	
Couch covers, cotton (Abstract 36087)	34629	
Countable cotton, mercerized (Abstract 37108)	35027	
Countervailing duty:		
British spirits	34752	
Rum from Great Britain	34982	
Country of origin; marking books	34994	
Court of Customs Appeals; appeals to the Supreme Court; amending section 195, act of March 3, 1911	34747	
Court of Customs Appeals, decisions of:		
Advertising matter (Roger & Gallet *v.* United States)	34973	
Agate beads; button blanks (American Bead Co. *v.* United States)	35001	
Catgut or whip gut (United States *v.* Sheldon & Co.)	34944	
Christmas seals (Gibson Art Co. *v.* United States)	34876	
Copper matte (United States *v.* American Smelting & Refining Co.)	34937	
Cork bark unmanufactured (United States *v.* Johns-Manville Co. and United States *v.* Armstrong Cork Co.)	34939	

Subject.	Dept. No.	G. A. No.
Court of Customs Appeals, decisions of—Continued.		
Coverins or containers (Wright & Graham Co. *v.* United States)	34976	
Duress (Batten & Co. *v.* United States)	34975	
Electric-light bulbs shaped as fruit (United States *v.* Wolff & Co.)	34943	
Frozen wheat (Schade & Co. *v.* United States)	35002	
Gloves (Altman & Co. *v.* United States)	34941	
Gloves (Lehman Co. *v.* United States)	34972	
Hatpin tops (National Hat Pin Co. *v.* United States)	34971	
Heated wheat (Atwood-Stone Co. *v.* United States)	35004	
Inspectors' fees (Atlantic Transport Co. *v.* United States)	34872	
Iron pile protectors (United States *v.* American Railroad Co. of Porto Rico)	35005	
Jewelry (Kraemer & Co. *v.* United States)	35003	
Kazunoko (United States *v.* Kagawa & Co. et al.)	34934	
Lubricating oil (United States *v.* Schrock & Squires and United States *v.* Richard & Co. et al.)	34974	
Olive oil in tins (United States *v.* Younglove Grocery Co.)	34873	
Pyrometer tubes (Stegemann, jr., *v.* United States)	34935	
Sake; leakage (S. Ban Co. et al. *v.* United States)	34874	
Sewing machine parts (United States *v.* Durbrow & Hearne Manufacturing Co.)	34940	
Shrinkage (United States *v.* Van Ingen & Co. et al.)	34970	
Small compasses (Sussfeld, Lorsch & Co. *v.* United States)	34875	
Spar prisms (United States *v.* Bausch & Lomb Optical Co.)	34942	
Stem glassware (United States *v.* Burley & Tyrrell Co.)	34938	
Straw slippers (Brown & Co. *v.* United States)	34936	
Sufficiency of protest (United States *v.* Sheldon & Co.)	34946	
Sufficiency of protest (United States *v.* Troy Laundry Machinery Co.)	34947	
Viscose caps (Nevin *v.* United States)	34945	
Court of Customs Appeals, decisions of; parties to suit:		
Altman & Co. *v.* United States	34941	
American Bead Co. *v.* United States	35001	
American Railroad Co. of Porto Rico, United States *v.*	35005	
American Smelting & Refining Co., United States *v.*	34937	
Armstrong Cork Co., United States *v.*	34939	
Atlantic Transport Co. *v.* United States	34872	
Atwood-Stone Co. *v.* United States	35004	
Batten & Co. *v.* United States	34975	
Bausch & Lomb Optical Co., United States *v.*	34942	
Brown & Co. *v.* United States	34936	
Burley & Tyrrell Co., United States *v.*	34938	
Durbrow & Hearne Manufacturing Co., United States *v.*	34940	
Gibson Art Co. *v.* United States	34876	
Johns-Manville Co., United States *v.*	34939	
Kagawa & Co. et al., United States *v.*	34934	
Kraemer & Co. *v.* United States	35003	
Lehman Co. *v.* United States	34972	
National Hat Pin Co. *v.* United States	34971	
Nevin *v.* United States	34945	
Richard & Co. et al., United States *v.*	34974	
Roger & Gallet *v.* United States	34973	
S. Ban Co. et al. *v.* United States	34874	
Schade & Co. *v.* United States	35002	
Schrock & Squires, United States *v.*	34974	
Sheldon & Co., United States *v.*	34944 34946	
Stegemann, jr., *v.* United States	34935	
Sussfeld, Lorsch & Co. *v.* United States	34875	
Troy Laundry Machinery Co., United States *v.*	34947	
Van Ingen & Co. et al., United States *v.*	34970	

Subject.	Dept. No.	G. A. No.
Court of Customs Appeals, decisions of; parties to suit—Continued.		
Wolff & Co., United States *v*.	34943	
Wright & Graham Co. *v*. United States	34976	
Younglove Grocery Co., United States *v*.	34873	
Court of Customs Appeals; suits dismissed	35021	
Courts, decisions of:		
Customs duties on salved cargo (Albury et al. *v*. Cargo of the *Lugano*)	34866	
Finality of appraisement (Bornn Hat Co. *v*. United States and United States *v*. Calhoun)	34846	
Forfeiture of tobacco (United States *v*. Five Bales of Tobacco)	34891	
Fraud (United States *v*. Salen)	34890	
Jurisdiction (State of Louisiana *v*. McAdoo)	34764	
Tea; Read test sustained (Macy *v*. Browne)	34653	
Courts, decisions of; parties to suit:		
Albury et al. *v*. Cargo of the *Lugano*	34866	
Bornn Hat Co. *v*. United States	34846	
Calhoun, United States *v*.	34846	
Five Bales of Tobacco, United States *v*.	34891	
Macy *v*. Browne	34653	
Salen, United States *v*.	34890	
State of Louisiana *v*. McAdoo	34764	
Coverings:		
Biscuits (Abstract 36483)	34763	
Display cases for pipes	34676	7592
Coverings of liquids and semiliquids:		
Abstract 36513	34774	
Abstract 36482	34763	
Abstract 36655	34824	
Abstract 36823	34889	
Abstract 37078	35000	
Abstracts 36420 and 36446	34756	
Abstracts 36576, 36600, and 36608	34789	
Abstracts 37011 and 37024	34984	
Coverings or containers (Wright & Graham Co. *v*. United States)	34976	
Covers for automobile seats and tops, etc., Sterling Top & Equipment Co., New York, drawback on	34689	
Covers for jars, metal screw (Abstract 36698)	34824	
Crape; silk trimmings (Abstract 36358)	34742	
Crash or toweling:		
Appeal from G. A. 7608	34950	
Plain woven fabrics	34818	7608
Cravenette-proofed or waterproofed fabrics and clothing, Cravenette Co., Hoboken, N. J., drawback on	34828	
Cream of wheat, Cream of Wheat Co., Minneapolis, Minn., drawback on	34722	
Creolin-Pearson; sheep dip (Abstract 36180)	34668	
Crochet balls; cotton ornaments (Abstract 36117)	34652	
Crochet buttons (Abstract 36785)	34871	
Crucible steel (Abstract 36536)	34774	
Crude gum benzoin; aromatic substance (Abstract 36876)	34920	
Crude vegetable fiber (Abstract 36464)	34763	
Crushed stone	34746	
Abstract 36304	34727	
Abstract 36461	34763	
Currants, weight of (Abstract 36468)	34763	
Cushion tops; appliquéd articles (Abstract 37128)	35027	
Cushions for needle-threading machines (Abstract 36668)	34824	
Customhouse broker's licenses, cancellation of	34857	
Customhouse brokers; special-tax liability	34962	
Customs blanks; notice of refund	34914	
Customs cigar stamps, cost of	34815	

Subject.	Dept. No.	G. A. No.
Customs districts:		
Consolidation of Nos. 2 and 3	34951	
Designation of, by numbers	34753	
Customs duties on salved cargo (Albury et al. *v.* Cargo of the *Lugano*)	34866	
Customs forms abolished	34883	
Customs officers, compensation of	34729	
Customs regulations; notice of liquidation (Abstract 36235)	34677	
Customs stamps for cigars made in bonded manufacturing warehouse	34659	
Cut glassware; lenses (Abstract 36928)	34933	
Cyanide of potassium (Abstract 36943)	34933	
D.		
Dalmatian sour cherries (Abstract 36246)	34698	
Damaged beans; nonimportation (Abstract 36289)	34704	
Damaged sugar; sampling (Abstract 36512)	34774	
Damask, cotton table	34903	7630
Darning cotton (Abstract 36753)	34865	
Day and night shells; fireworks (Abstract 37029)	34984	
Decorated bottle caps of metal. (*See* Bottle caps.)		
Decorated glassware; water sets (Abstract 37141)	35027	
Decorated sprinkler tops; trade-marks	34888	7627
Delivery of manifest; tender of entry (Abstract 36899)	34920	
Desiccated potatoes, ground (Abstract 37090)	35020	
Designation of customs collection districts by numbers	34753	
Desi gram; lentils; pease (Abstract 36851)	34908	
Desk, antique (Abstract 36990)	34969	
Diamantine; pyroxylin articles (Abstract 36588)	34789	
Diamonds, weight of (Abstract 36561)	34789	
Diced leather:		
Abstract 36555	34789	
Abstract 36677	34824	
Dies; appraisement	34660	
Disbursing officers, moneys withheld at source by; income tax	34699	
Discount; American vessels (Abstract 36744)	34865	
Display cases for pipes; coverings	34676	7592
Distillation, residue from (Abstract 36239)	34677	
Dockets for hearings by Board of General Appraisers	34967	
Dogskin mats (Abstract 36675)	34824	
Dogskins; dressed furs (Abstract 36623)	34810	
Domestic products, free entry of	34669	
Door knobs, glass (Abstracts 37122 and 37140)	35027	
Drawback on:		
Adhesive pastes and liquid glue; National Gum & Mica Co., New York	34682	
Almonds; Habicht, Braun & Co., New York	34723	
Aluminum and welding compounds; Goldschmidt Thermit Co., New York	35012	
Artificial leather; O'Bannon Corporation, Boston, Mass	34880	
Artificial silk; Teschemacher Co., New York	34960	
Automobile and motor truck springs; Perfection Spring Co., Cleveland, Ohio	34987	
Automobile chassis; Mercedes Repair Co., New York	34964	
Automobile clocks and chronodometers; E. C. Meyer, Cleveland, Ohio	34715	
Automobile hoods; Michigan Stamping Co., Detroit, Mich	34796	
Automobile tops; American Top Co., Jackson, Mich	34797	
Automobiles and parts; Abbott Motor Car Co., Detroit, Mich	34802	
Automobiles and parts; Baker Motor Vehicle Co., Cleveland, Ohio	34833	
Automobiles and parts; Chandler Motor Car Co., Cleveland, Ohio	34832	

Subject.	Dept. No.	G. A. No.
Drawback on—Continued.		
Automobiles and parts; Lozier Motor Co., Detroit ,Mich	34805	
Automobiles and parts; J. M. Quinby & Co., Newark, N. J	34654	
Automobiles and parts; Packard Motor Car Co., Detroit, Mich	34852	
Automobiles and parts; Peerless Motor Car Co., Cleveland, Ohio	35010	
Automobiles and parts; Pierce-Arrow Motor Car Co., Buffalo, N. Y	34895	
Automobiles and parts; T. B. Jeffrey Co., Kenosha, Wis	34911	
Automobile axles; American Ball Bearing Co., Cleveland, Ohio	34801	
Automobile axles; Hess Spring & Axle Co., Cincinnati, Ohio	34851	
Automobile axles and gears; Yuster Axle Co., Cleveland, Ohio	34835	
Automobiles; Ford Motor Co., Detroit, Mich	34953	
Automobiles; Studebaker Corporation, Detroit, Mich	34776	
Automobile wind shields; Universal Wind Shield Co., Chicago, Ill	34803	
Beaver board; Beaver Board Co., Buffalo, N. Y	34966	
Beds, cribs, etc.; Simmons Manufacturing Co., Kenosha, Wis	34792	
Bentwood furniture; Thonet Bros., New York	34954	
Binder twine; Peoria Cordage Co., Peoria, Ill	34688	
Bookcases; Gunn Furniture Co., Grand Rapids, Mich	34775	
Bottled Fellows compound sirup of hypophosphites; Fellows Medical Manufacturing Co., New York	34894	
Bottle stoppers; Interstate Bottle Stopper Co., New York	34655	
Box straps; De Haven Manufacturing Co., New York	34733 34770	
Braids; Goodman Bros. & Hinlein, Philadelphia, Pa	35009	
Braids; L. B. Simonds & Co., New York	34621	
Burning Colza oil; Union Petroleum Co., Philadelphia, Pa	34830	
Candies; Package Confectionery Co., Boston, Mass	34791	
Cans and attachments; Tidewater Oil Co., New York	34772	
Castor oil	34879	
Chewing gum; Wm. Wrigley, jr., Co., Chicago, Ill	34637	
Chicory; H. Franck Sons (Inc.), Flushing, N. Y	34854	
Chinese lamp founts and lamp case shooks; Standard Oil Co., New York	34838	
Cigarette machines; American Machine & Foundry Co., New York	34680	
Cigarette tips; Boucher Cork & Machine Co., New York	34878	
Cigarettes; Starr & Reed, Philadelphia, Pa	34746	
Clothing; Kuppenheimer & Co., Chicago, Ill	34719	
Cocaine hydrochloride; Merck & Co., New York	34829	
Condensed milk; Libby, McNeill & Libby, Chicago, Ill	34847	
Condensed milk; Wisconsin Condensed Milk Co., Burlington, Wis	34921	
Condensers for steam boilers; Alberger Pump & Condenser Co., New York	34867	
Copaiba; Dodge & Olcott Co., New York	34626	
Cords and loops; B. Ulmann & Co., New York	34812	
Corsets; Corset H. Co., Worcester, Mass	34773	
Cotton piece goods; Pond Lily Co., New Haven, Conn	34831	
Cotton yarns; L. Littauer, New York	34981	
Covers for automobile seats and tops, etc.; Sterling Top & Equipment Co., New York	34689	
Cravenette-proofed or waterproofed fabrics and clothing; Cravenette Co., Hoboken, N. J	34828	
Cream of Wheat; Cream of Wheat Co., Minneapolis, Minn	34722	
Dyed cotton piece goods; Du Pont Fabrikoid Co., Wilmington, Del	34632	
Dyed silk piece goods; S. Yajima, New York	34963	
Dynamite and dynamite powder, etc	34716	

Subject.	Dept. No.	G. A. No.
Drawback on—Continued.		
Dynamos and motors; Gray & Davis (Inc.), Boston, Mass	34686	
Electric commutators; Cameron Electrical Manufacturing Co., Ansonia, Conn	34834	
Embossed and crystallized tin sheets; M. Gould's Sons & Co., Newark, N. J	34638	
Essential oil of cloves; Dodge & Olcott Co., New York	34713	
Fabrikoid; Du Pont Fabrikoid Co., Wilmington, Del	34635	
Flavoring extracts; Davis & Lawrence Co., New York	34734 34855	
Flavoring extracts; Fries & Bro., New York	34912	
Flavoring extracts; George Lueders & Co., New York	34619	
Flavoring extracts; J. Matthews (Inc.), New York	34636	
Flavoring extracts; Lehman-Rosenfeld Co., Cincinnati, Ohio	34881	
Flavoring extracts; Seeman Bros., New York	34690	
Flavoring extracts; Star Extract Works, New York	34986	
Glue; Tunnell & Co. (Inc.), Philadelphia, Pa	34798	
Hack-saw blades	34639	
Hats; London Feather Co., New York	34684	
Hats; Pattison & Co. (Ltd.), New Orleans, La	34922	
Hydrogen peroxide; Mallinckrodt Chemical Works, St. Louis, Mo	34648	
Incandescent mantles; T. D. 30973 amended	34714	
Jams; Montclair Jam Kitchens, Montclair, N. J	34685	
Jewelry; Barber Jewelry Manufacturing Co., New York	34681	
Magnetos; Hendricks Novelty Co., Indianapolis, Ind	34721	
Medicinal and toilet preparations; McKesson & Robbins, New York	34634	
Medicinal and toilet preparations; Sanitol Chemical Labratory Co., St. Louis, Mo	34720	
Medicinal preparations and flavoring extracts; H. K. Mulford Co., Philadelphia, Pa	34813	
Medicinal preparations; I. L. Lyons & Co. (Ltd.), New Orleans, La	34692	
Medicinal preparations; Powers-Weightman-Rosengarten Co., Philadelphia, Pa	34781	
Mercurial preparations; Chas. Pfizer & Co., New York	34679	
Mercurial preparations; Mallinckrodt Chemical Works, St. Louis, Mo	34795	
Milk chocolates; Lamont, Corliss & Co., New York	34794	
Motor trucks and parts; Standard Motor Truck Co., Detroit, Mich	34988	
Muskrat skins and plates; C. & E. Chapal Frères & Cie., Brooklyn, N. Y	34884	
Novelty mirrors; Parisian Novelty Co., Chicago, Ill	34850	
Nuts; Habicht, Braun & Co., New York	34620	
Oils; Craycroft Oil Co., New York	34877	
Olives; Austin, Nichols & Co., New York	34622	
Olives; Falcon Packing Co., New York	34735	
Photographic paper; Rochester Photo Works (Inc.), Rochester, N. Y	34790	
Pianos and player pianos; Aeolian Co., New York	35011	
Pianos; French & Sons Piano Co., New Castle, Ind	34800	
Preserved and canned pears; Curtice Bros. Co., Rochester, N. Y	34839	
Railway passenger coaches; Osgood Bradley Car Co., Worcester, Mass	34656	
Refined glycerin	34717	
Saws; E. C. Atkins & Co., Indianapolis, Ind	34644	
Self-starting devices for automobiles; Gray & Davis (Inc.), Boston, Mass	34687	
Shoe cloth; Windram Manufacturing Co., Boston, Mass	34633	
Siphon bottles and parts; Koscherak Siphon Bottle Works, Hoboken, N. J	34643	

Subject.	Dept. No.	G. A. No.
Drawback on—Continued.		
Smoking tobacco; J. S. Maloof & Co., New York	34641	
Sugars and sirups; T. D. 33062 amended	34662 34663	
Sugars and sirups; T. D. 34340 amended	34664	
Talking machines; Crescent Talking Machine Co., New York	34618	
Tin cans; Standard Oil Co. of New Jersey	34924	
Toilet preparations; Kolynos Co., New Haven, Conn	34769	
Tools; Cleveland Pneumatic Tool Co., Cleveland, Ohio	35008	
Turbine blowers; Terry Steam Turbine Co., Hartford, Conn	34691	
Turkey red oil or sulphonated oil; National Red Oil & Soap Co., Harrison, N. J	34965	
Underwear; Union Mills (Inc.), Hudson, N. Y	34710	
Vacuum cleaners and electric sweepers; Duntley Products Co., Erie, Pa	34840	
Vacuum cleaners; Eureka Vacuum Cleaner Co., Detroit, Mich	34959	
Veils; D. Strauss Co. (Inc.), New York	34640	
Velvets and plushes; Salt's Textile Manufacturing Co., Bridgeport, Conn	34814	
Walnuts; Bennett, Day & Co., New York	34730	
Witch-hazel; Gould Witch-Hazel Co., Windham, N. H	34724	
Wind shields; Diamond Manufacturing Co., Detroit, Mich	34617	
Drawings (Abstract 36850)	34908	
Drawnwork:		
Abstract 36857	34908	
Articles (Abstract 36323)	34727	
Flax articles (Abstract 37044)	35000	
Handkerchiefs (Abstract 36830)	34889	
Tidies and bureau scarfs	34918	7637
Dressed furs:		
Abstract 36796	34871	
Abstract 37121	35027	
Dogskins (Abstract 36623)	34810	
Ermine tails (Abstract 36907)	34933	
Dressed goatskins:		
Abstract 36448	34763	
Abstract 36992	34984	
Abstract 37066	35000	
Dried nori in sheets; prepared vegetables (Abstract 36790)	34871	
Dried pease; seed pease (Abstract 36989)	34969	
Dried red peppers (Abstract 36836)	34889	
Druggists' sundries; gas tubing (Abstract 37061)	35000	
Drugs:		
Advanced in value: herbs (Abstract 36209)	34677	
Crude; parsley seed (Abstract 36223)	34677	
Herbs, cut or ground (Abstract 36804)	34871	
Drums, iron or steel, for shipping acids; free entry	34955	
Ducklings and chicks, stuffed	35016	7653
Duluth, Missabe & Northern Railway Co., bond of, as common carrier	34731	
Duress:		
Abstract 36120	34652	
Abstract 36167	34668	
Abstract 36273	34704	
Abstract 36392	34742	
Abstract 36509	34774	
Abstract 37018	34984	
Batten & Co. *v.* United States	34975	
Commissions (Abstracts 36291 and 36292)	34704	
Dutiable value; entireties; thermometers and boxes (Abstract 36232)	34677	
Dyed cotton piece goods, Du Pont Fabrikoid Co., Wilmington, Del., drawback on	34632	

Subject.	Dept. No.	G. A. No.
Dyed silk piece goods, S. Yajima, New York, drawback on	34963	
Dynamite and dynamite powder, etc., drawback on	34716	
Dynamos and motors, Gray & Davis (Inc.), Boston, Mass., drawback on	34686	
E.		
Earthenware (Abstract 36467)	34763	
Earthenware steins; musical instruments (Abstract 36100)	34629	
Earthenware teapots (Abstract 36368)	34742	
Edgings and insertings; braids (Abstract 36357)	34742	
Elastic cords and webbings:		
Abstract 36089	34629	
Abstract 36320	34727	
Electric commutators, Cameron Electrical Manufacturing Co., Ansonia, Conn., drawback on	34834	
Electric-light bulbs shaped as fruit (United States *v.* Wolff & Co.)	34943	
Electroliers; incandescent electric-light bulbs (Abstract 36383)	34742	
Embossed and crystallized tin sheets, M. Gould's Sons & Co., Newark, N. J., drawback on	34638	
Embossed post cards (Abstract 37105)	35027	
Embroidery cotton (Abstract 36780)	34871	
Embroidered cotton wearing apparel in part of Lever lace (Abstract 36999)	34984	
Embroidered flouncings in part of Lever lace (Abstract 36985)	34969	
Embroidered leather gloves:		
Abstract 36343	34742	
Abstract 36525	34774	
Abstract 36624	34810	
Abstract 36785	34871	
Abstract 36842	34908	
Abstract 36961	34969	
Abstracts 36550 and 36584	34789	
Embroidered hosiery	34930	7644
Embroidered scarfs, metal-thread (Abstract 36243)	34698	
Embroidered wearing apparel (Abstracts 36360 and 36388)	34742	
Embroidery machines (Abstract 36272)	34704	
Emergency revenue law:		
Baggage entries	34995	
Certificates of exportation of domestic merchandise	35014	
Certificates of ownership	34991	
Customhouse brokers; special tax	34962	
Informal entries, Cat. No. 4835	34961	
Mail entries; stamp tax	34948 35023	
Parcel-post packages, no stamp tax required on	34983	
Stamp tax on bonds, etc., act of Oct. 22, 1914	34979	
Withdrawals for transportation	35006 35007	
Enameled earthenware; Satsuma ware (Abstract 36240)	34677	
Enameled upholstery leather (Abstract 37120)	35027	
Enamel paint (Abstract 36965)	34969	
English pound sterling and German mark; T. D. 34610 amended	34658	
Entered value, reduction of	34806	
Entireties:		
American goods returned (Abstract 36096)	34629	
Ivory toilet sets (Abstract 36870)	34920	
Marble pedestals for statues (Abstract 37020)	34984	
Thermometers and boxes (Abstract 36232)	34677	
Entries:		
Bonds, etc., stamps for	34910	
Informal, Cat. No. 4835, stamp taxes	34961	
Stamp tax; emergency revenue law	34948	

Subject.	Dept. No.	G. A. No.
Entry:		
Consolidated; stamp tax	34978	
Examination of merchandise prior to	34744	
Free; articles for institutions	34980	
Mail importations	34739	
Merchandise	34614	
Entry by pro forma invoice	34999	7651
Equipment and outfit for vessels; Panama Canal act (Abstract 37076)	35000	
Equipment of vessels, transfer of; appeal from G. A. 7639	35022	
Erie & Western Transportation Co., bond of, as common carrier	34767	
Ermine tails; dressed furs (Abstract 36907)	34933	
Essential oil of cloves, Dodge & Olcott Co., New York, drawback on	34713	
Ethyl chloride	35026	7658
Evergreen seedlings; rhododendrons (Abstract 36849)	34908	
Examination of merchandise prior to entry	34744	
Executive order:		
Enforcement of neutrality laws	34695	
Radio communication	34712	
F.		
Fabrikoid, Du Pont Fabrikoid Co., Wilmington, Del., drawback on	34635	
Fan chains (Abstract 36894)	34920	
Fancy figures; favors; toys (Abstract 36163)	34668	
Fancy matches (Abstract 36724)	34865	
Fancy metal pencils	34870	7625
Favored nations; wood pulp; Canadian reciprocity (Abstract 36226)	34677	
Feather articles; artificial flowers (Abstract 36629)	34810	
Featherbone (Abstract 36751)	34865	
Fees, protest	34926 34927	7640 7641
Fern balls; nonenumerated articles (Abstract 36288)	34704	
Fertilizer:		
Radium residuum (Abstract 37079)	35020	
Scrap leather; leather dust (Abstract 36605)	34789	
Fiber, vegetable. (*See* Vegetable fiber.)		
Figured cotton cloth:		
Abstract 36831	34889	
Woven	34858	7618
Films, moving-picture	34892	
Finality of appraisement (Bornn Hat Co. *v.* United States and United States *v.* Calhoun)	34846	
Finality of board's decision	34666	7589
Fire brick:		
Abstract 36227	34677	
Abstract 37095	35020	
Fireworks; day and night shells (Abstract 37029)	34984	
Fish balls:		
Abstract 36077	34629	
Abstract 36809	34871	
Abstract 36898	34920	
Fish bread; kamaboko:		
Abstract 36108	34652	
Abstract 36181	34668	
Fish, fresh-water, skinned and boned	34836	
Fish in half barrels (Abstract 36086)	34629	
Fish in kegs (Abstract 36642)	34810	
Fish in oil:		
Abstract 36077	34629	
Abstract 36300	34727	
Abstract 36641	34810	
Abstracts 36916 and 36944	34933	
Abstracts 36874, 36882, and 36898	34920	

Subject.	Dept. No.	G. A. No.
Fish in tins:		
Abstract 36109	34652	
Abstract 36211	34677	
Abstract 36242	34698	
Abstract 36452	34763	
Abstract 36640	34810	
Abstract 36693	34824	
Abstract 36707	34845	
Abstract 36735	34865	
Abstract 36916	34933	
Abstracts 36269 and 36287	34704	
Abstracts 36494 and 36531	34774	
Abstracts 36846 and 36856	34908	
Abstracts 36300, 36301, and 36312	34727	
Abstracts 36330, 36353, and 36380	34742	
Abstracts 36414, 36428, and 36443	34756	
Abstracts 36775, 36808, and 36810	34871	
Abstracts 36873, 36883, and 36898	34920	
Antipasto (Abstract 36828)	34889	
Classification of, under act of 1909	34788	7602
Herrings. (*See* Herrings.)		
Salmon (Abstract 36994)	34984	
Fish roe, preserved (Abstract 36530)	34774	
Fitted leather cases:		
Abstract 36230	34677	
Abstract 36308	34727	
Abstract 36479	34763	
Abstract 36546	34774	
Abstract 36758	34865	
Abstract 36822	34889	
Five per cent discount:		
Abstract 36281	34704	
Abstract 37014	34984	
Silk belting (Abstract 36137)	34652	
Flavoring extracts:		
Davis & Lawrence Co., New York, drawback on	34734 34855	
Fries & Bro., New York, drawback on	34912	
George Lueders & Co., New York, drawback on	34619	
J. Matthews (Inc.), New York, drawback on	34636	
Lehman-Rosenfeld Co., Cincinnati, Ohio, drawback on	34881	
Seeman Bros., New York, drawback on	34690	
Star Extract Works, New York, drawback on	34986	
Flax articles:		
Abstract 36752	34865	
Abstract 36786	34871	
Drawnwork (Abstract 37044)	35000	
Flax fabrics:		
Abstract 37110	35027	
Weight of (Abstract 36498)	34774	
Flax card waste; paper stock (Abstract 36654)	34824	
Flax pillow tubing; reliquidation (Abstract 37111)	35027	
Flax straw, broken (Abstract 36502)	34774	
Flax towels (Abstract 36749)	34865	
Flouncings, embroidered, in part of Lever lace (Abstract 36985)	34969	
Fraud; reliquidation:		
Abstract 36340	34742	
Abstract 36544	34774	
Fraud (United States *v.* Salen)	34890	
Fraudulent entry, remedy in case of	34917	7636
Free entry;		
Domestic products	34669	
Iron or steel drums for shipping acids	34955	

Subject.	Dept. No.	G. A. No.
French Guiana, parcel-post convention with	34825	
Fresh-water fish skinned and boned	34836	
Frozen wheat (Schade & Co. *v.* United States)	35002	
Fruit, etc., allowance for decay	34737	
Fruit, rotten. (*See* Rotten fruit.)		
Fruits in own juices; submission on samples (Abstract 36279)	34704	
Food and drugs products, samples of; parcel post	34745	
Forceps, nippers, and pliers	35018	7655
Foreign-built yacht; tonnage tax (Abstract 36858)	34908	
Foreign coins, values of. (*See* Coins, foreign, values of.)		
Foreign-mail packages, method of rewrapping	34707	
Forfeiture of tobacco invoiced as filler and found to be wrapper (United States *v.* Five Bales of Tobacco)	34891	
Forms, customs, abolished	34883	
Fountain of marble and metal; sculptures (Abstract 36095)	34629	
Fur clippings (Abstract 36447)	34763	
Fur hats (Abstract 36440)	34756	
Furniture covered with cotton velvet	34901	7628
Furs, dressed. (*See* Dressed furs.)		
Fur skins, raw (Abstract 36084)	34629	
Fur waste; glue stock (Abstract 36659)	34824	
Fur wearing apparel (Abstract 36969)	34969	
Fustin; extract of vegetable origin	34821	7611
G.		
Garlic, weight of (Abstract 36954)	34933	
Gas tubing; druggists' sundries (Abstract 37061)	35000	
Gasoline tanks; iron drums (Abstract 36459)	34763	
Gauge of—		
Gin	34657	
Stout (Abstract 36516)	34774	
Whisky (Abstract 36394)	34742	
German mark and English pound sterling; T. D. 34610 amended	34658	
Geyserite, ground; sand (Abstract 36371)	34742	
Gin, gauge of. (*See* Gauge.)		
Glass and fish scale buttons (Abstract 37077)	35000	
Glass; butzen (Abstract 36424)	34756	
Glass cloth, union (Abstract 36497)	34774	
Glass, colored; optical glass (Abstract 36798)	34871	
Glass door knobs (Abstracts 37122 and 37140)	35027	
Glass lamp shades and chimneys (Abstract 36178)	34668	
Glass, manufactures of; mosaic cubes (Abstract 36586)	34789	
Glass seidels (Abstract 37126)	35027	
Glass towel bars (Abstract 37097 and 37127)	35027	
Glasses, hand, reading, duty on, under act of 1913	34782	
Glassware:		
Blown (Abstract 36930)	34933	
Chemical. (*See* Chemical glassware.)		
Stem (United States *v.* Burley & Tyrrell Co.)	34938	
Glove leather, duty on, under act of 1913	34861	7621
Gloves:		
Abstracts 36624 and 36625	34810	
Altman & Co. *v.* United States	34941	
Cotton (Abstract 37131)	35027	
Ladies' golf; fabric gloves (Abstract 36184)	34668	
Lambskins (Abstract 37065)	35000	
Lehman Co. *v.* United States	34972	
Length of (Abstract 36889)	34920	
Glue stock; fur waste (Abstract 36659)	34824	
Glue, Tunnell & Co. (Inc.), Philadelphia, Pa., drawback on	34798	
Glycerin (Abstract 36803)	34871	

Subject.	Dept. No.	G. A. No.
Goddard's plate powder (Abstract 36627)	34810	
Gold-foil figures (Abstract 37068)	35000	
Goatskins:		
Abstract 36797	34871	
Abstracts 36717 and 36718	34865	
Dressed. (*See* Dressed goatskins.)		
Goggle lenses (Abstract 36929)	34933	
Gold and silver sweepings (Abstract 36518)	34774	
Goldstone; imitation precious stones (Abstract 36971)	34969	
Golf gloves, ladies'; fabric gloves (Abstract 36184)	34668	
Goose-breasts' containers; immediate coverings (Abstract 37092)	35020	
Grain leather:		
Abstract 36552	34789	
Abstract 36679	34824	
Abstract 36719	34865	
Granito (Abstract 36462)	34763	
Grass imitation aigrettes (Abstract 36526)	34774	
Grass mats (Abstract 36681)	34824	
Grass twine; baling twine (Abstract 36906)	34933	
Grinding machines:		
Abstract 36213	34677	
Card clothing (Abstract 37074)	35000	
Ground desiccated potatoes (Abstract 37090)	35020	
Ground red peppers (Abstract 37135)	35027	
Ground waste rubber (Abstract 36602)	34789	
Guaiacol crystals; medicinal preparation (Abstract 36074)	34629	
Gum arabic; calcined magnesia (Abstract 36183)	34668	
Gum, balbuse, so-called	34897	
Gun-metal hatpins, brass neck chains, etc.; appeal from Abstract 35405 (T. D. 34416)	34647	
Gut cable (Abstract 36841)	34908	
Gutta-percha pitch (Abstract 37022)	34984	
H.		
Hack-saw blades, drawback on	34639	
Hair nets, silk. (*See* Silk hair nets.)		
Halle clay (Abstract 36630)	34810	
Ham, rolled; sausage (Abstract 36277)	34704	
Hand bags (Abstract 36426)	34756	
Hand reading glasses, duty on, under act of 1913	34782	
Handerchiefs, drawnwork (Abstract 36830)	34889	
Handkerchiefs in part of Lever lace:		
Abstract 36164	34668	
Abstract 37007	34984	
Hatpin tops:		
Abstract 36411	34756	
Abstract 36558	34789	
Jewelry (Abstract 36632)	34810	
National Hat Pin Co. *v.* United States	34971	
Hatpins; jewelry. (*See* Jewelry.)		
Hatpins:		
Millinery ornaments (Abstract 37085)	35020	
Rubber jewelry (Abstract 36826)	34889	
Hats:		
Artificial silk. (*See* Artificial silk hats.)		
Fur (Abstract 36440)	34756	
London Feather Co., New York, drawback on	34684	
Pattison & Co., (Ltd.), New Orleans, La., drawback on	34922	
Silk and wool (Abstract 36897)	34920	
Untrimmed (Abstract 36356)	34742	
Hats of straw, grass, or imitation horsehair (Abstract 36741)	34865	

Subject.	Dept. No.	G. A. No.
Hatters' fur (Abstract 36871)	34920	
Hatters' plush:		
Silk pl sh (Abstract 36920)	34933	
Silk velvet (Abstract 36885)	34920	
Headquarters port No. 18, Tampa, Fla	34780	
Hearings, dockets for, by Board of General Appraisers	34967	
Heated wheat (Atwood-Stone Co. *v.* United States)	35004	
Hedge shears	34665	7588
Appeal from G. A. 7588	34768	
Herbs, cut; drugs:		
Abstract 36209	34677	
Abstract 36638	34810	
Abstract 36804	34871	
Herrings:		
Mackerel (Abstract 36210)	34677	
Pickled (Abstract 36268)	34704	
Pilchards (Abstract 36774)	34871	
Salted (Abstract 36157)	34668	
Herrings; fish in tins:		
Abstract 36414	34756	
Abstracts 36078 and 36085	34629	
Hexagon turret lathes; machine tools (Abstract 36708)	34845	
Horse (Abstract 36852)	34908	
Horsehair hats, imitation (Abstract 36186)	34668	
Horses, values of (Abstract 36646)	34810	
Hosiery, embroidered	34930	7644
Household effects; child's crib (Abstract 36258)	34698	
House of worship, stained or painted glass windows for	34928	7642
Huck toweling (Abstract 37000)	34984	
Hydrogen peroxide, Mallinckrodt Chemical Works, St. Louis, Mo., drawback on	34648	
Hyposulphite of soda (Abstract 36692)	34824	
I.		
Illipe nuts (Abstract 36710)	34845	
Imitation coral (Abstracts 37096 and 37099)	35027	
Imitation horsehair hats:		
Abstract 36186	34668	
Abstract 36233	34677	
Imitation jet:		
Abstract 36285	34704	
Abstract 36557	34789	
Abstract 36636	34810	
Abstract 36492	34774	
Abstract 36980	34969	
Abstract 37002	34984	
Abstract 37125	35027	
Abstracts 36933 and 36938	34933	
Abstracts 37069 and 37070	35000	
Abstracts 36406, 36426, and 36438	34756	
Imitation opals on wire (Abstract 37100)	35027	
Imitation pearl bead necklaces (Abstract 36489)	34774	
Imitation pearl beads:		
Abstract 36230	34677	
Abstract 36264	34704	
Abstract 36436	34756	
Abstract 36844	34908	
Abstract 37040	35000	
Abstracts 36346 and 36377	34742	
Abstracts 36972 and 36983	34969	

Subject.	Dept. No.	G. A. No.
Imitation pearls on wire:		
Abstract 36490	34774	
Abstract 36843	34908	
Imitation precious stones:		
Abstract 36147	34668	
Abstract 36491	34774	
Abstract 36705	34845	
Abstract 36894	34920	
Abstracts 36409 and 36412	34756	
Abstracts 36939 and 36940	34933	
Abstracts 36971 and 36982	34969	
Abstracts 37101 and 37102	35027	
Abstracts 36347, 36348, and 36376	34742	
Abstracts 36993, 37001, and 37015	34984	
Beads. (*See* Beads.)		
Button blanks (Abstract 36848)	34908	
Importers' remedies; subsection 14, sec. 28, act of 1909	34696	7593
Incandescent mantles, drawback on; T. D. 30973 amended	34714	
Income tax; moneys withheld at source by disbursing officers	34699	
India rubber, braids in chief value of	34887	7626
Indigo paste:		
Abstract 36329	34742	
Abstract 36805	34871	
Informal entries, Cat. No. 4835; stamp taxes	34961	
Initials. paper, metal-coated (Abstract 37041)	35000	
Inspectors' fees (Atlantic Transport Co. *v.* United States)	34872	
Institutions, articles for; free entry	34980	
Insular Line, bond of, as common carrier	34673	
Insulators; amended protest (Abstract 37025)	34984	
International Bureau of Telegraphic Union, Berne, Switzerland, publications of, free of duty	34725	
Invoices	34779	
Certification of	34611	
Certified; validity of bonds	34999	7651
Instructions relative to	34700	
T. D. 34779 modified	34869	
Invoicing tobacco, manner of; forfeiture (United States *v.* Five Bales of Tobacco)	34891	
Iron drums:		
American goods returned (Abstract 37047)	35000	
Gasoline tanks; acid containers (Abstract 36459)	34763	
Iron or steel drums for shipping acids; free entry	34955	
Iron pile protectors (United States *v.* American Railroad Co. of Porto Rico)	35005	
Isotonique sea water, duty on, under act of 1913	34864	7624
Issuance of circulars and circular letters; regulations	34613	
Istle (Abstract 36504)	34774	
Items not advanced; jurisdiction	34859	7611
Ivory pieces (Abstract 36966)	34969	
Ivory toilet sets; entireties (Abstract 36870)	34920	
J.		
Jacquard attachment; Lever or Gothrough machines (Abstract 36066)	34629	
Jacquard figured goods; towels and quilts (Abstract 37129)	35027	
Jacquard figured upholstery goods (Abstract 36756)	34865	
Jacquard woven cotton cloth; appeal from G. A. 7618	34949	
Jams, Montclair Jam Kitchens, Montclair, N. J., drawback on	34685	
Japanese articles, marking of	34740	
Japanese cowhides; sealskins (Abstract 36679)	34824	
Jasper ware; appraiser's report (Abstract 36471)	34763	

Subject.	Dept. No.	G. A. No.
Java hats; split bamboo; chip (Abstract 37056)	35000	
Jet articles, imitation (Abstract 37002)	34984	
Jet combs; paste articles (Abstract 36686)	34824	
Jet, imitation. (*See* Imitation jet.)		
Jewelers' lathes, machine tools (Abstract 37042)	35000	
Jewelry:		
Abstract 36148	34668	
Abstract 36207	34677	
Abstract 36450	34763	
Abstract 36845	34908	
Abstracts 37084–37086	35020	
Abstracts 36105 and 36106	34652	
Abstracts 36492 and 36543	34774	
Abstracts 36799 and 36800	34871	
Abstracts 36826 and 36827	34889	
Abstracts 37124 and 37142	35027	
Abstracts 36266, 36284, and 36285	34704	
Abstracts 36327, 36351, and 36378	34742	
Abstracts 36663, 36687, and 36688	34824	
Abstracts 36879, 36894, and 36901	34920	
Abstracts 37039, 37068, and 37072	35000	
Abstracts 36403–36405, 36426, 36435, and 36438	34756	
Abstracts 36557, 36559, 36565, 36589, and 36590	34789	
Barber Jewelry Manufacturing Co., New York, drawback on	34681	
Kraemer & Co. *v.* United States	35003	
Rubber. (*See* Rubber jewelry.)		
Jewelry boxes:		
Abstract 37050	35000	
Silk velvet and wood (Abstract 36884)	34920	
Jewelry; hat pins:		
Abstract 36979	34969	
Abstract 36800	34871	
Jewels; imitation precious stones (Abstract 37101)	35027	
Joss sticks:		
Abstract 36097	34629	
Abstract 36902	34920	
Judiciary; amending section 195, act of March 3, 1911; appeal to Supreme Court	34747	
Jurisdiction of appraiser over packing charges; additional duty	34726	7595
Jurisdiction (State of Louisiana *v.* McAdoo)	34764	
Jute bagging:		
Abstract 36463	34763	
Waste (Abstract 36171)	34668	
Jute bags, secondhand (Abstract 37130)	35027	
Jute padding (Abstract 37017)	34984	
Jute sugar bags (Abstract 37088)	35020	
Jute thread waste	35015	7652
Jute waste (Abstract 36545)	34774	
K.		
Kamaboko; fish bread. (*See* Fish bread.)		
Kazunoko (United States *v.* Kagawa & Co. et al.)	34934	
Kippered herring (Abstract 36898)	34920	
Knitted silk mufflers:		
Appeal from Abstract 36162 (T. D. 34668)	34762	
Fringed (Abstract 36162)	34668	
Knitted wool caps, ornamented	34985	
Knives for leather-cutting machines (Abstract 36697)	34824	

Subject.	Dept. No.	G. A. No.
L.		
Labels:		
Seals lithographically printed (Abstract 36539)	34774	
Weight of (Abstract 36785)	34871	
Lace articles made on Lever machine (Abstract 36921)	34933	
Lace ornaments; buttons (Abstract 36187)	34668	
Lace pins:		
Abstract 36345	34742	
Abstract 36984	34969	
Gold plated (Abstract 36160)	34668	
Jewelry (Abstract 37084)	35020	
Lace, shortage of (Abstract 36370)	34742	
Laces in part of Lever material (Abstract 36387)	34742	
Ladies' scarfs; artificial silk ornaments (Abstract 36245)	34698	
Lambrequins, classification of, under act of 1913	34968	7647
Lambskin gloves (Abstract 37065)	35000	
Lamp shades and chimneys, glass (Abstract 36178)	34668	
Lava stone:		
Abstract 36488	34774	
Abstract 36890	34920	
Abstract 36958	34969	
Lead wastage; bonded smelters	34990	
Leaf tobacco (Abstract 36326)	34742	
Leakage of sake:		
Abstract 37137	35027	
S. Ban Co. et al *v.* United States	34874	
Leather:		
Abstracts 36677–36680	34824	
Abstracts 36552–36555 and 36605	34789	
Leather belt:		
Abstract 36959	34969	
Sufficiency of protest	34807	7603
Leather cases, fitted. (*See* Fitted leather cases.)		
Leather, enameled upholstery (Abstract 37120)	35027	
Leather gloves, embroidered. (*See* Embroidered leather gloves.)		
Leather moccasins (Abstract 37028)	34984	
Leather strips (Abstract 36678)	34824	
Legal status of Board of General Appraisers	34666	7589
Legality of reappraisement:		
Abstract 36571	34789	
Abstract 36760	34865	
Lenses (Abstracts 36926–36929)	34933	
Lentils; pease:		
Abstract 36851	34908	
Appeal from Abstract 36851 (T. D. 34908)	34956	
Lever lace:		
Abstracts 36359 and 36385–36387	34742	
Cotton wearing apparel in part of (Abstract 36313)	34727	
Wearing apparel in part of (Abstract 36886))	34920	
Lever machine, articles made on:		
Abstract 36454	34763	
Abstract 36572	34789	
Silk hair nets (Abstract 36066)	34629	
Liquids and semiliquids. (*See* Coverings of.)		
Lithographic post cards (Abstract 36997)	34984	
Lithographic print of oil painting on cotton cloth not a work of art	34929	7643
Lithographic prints; seals (Abstract 36777)	34871	
Lithographic pull cards (Abstract 36271)	34704	
Lithographically-printed calendars (Abstract 36125)	34652	
Live snails (Abstract 36253)	34698	
Lubricating oil (United States *v.* Schrock & Squires and United States *v.* Richard & Co. et al)	34974	

Subject.	Dept. No.	G. A. No.
Luckenbach Steamship Co. (Inc.), bond of, as common carrier	34778	
Lumber, beaded; novelty siding:		
Abstract 36765	34871	
Abstract 36067	34629	
Appeal from Abstract 36067 (T. D. 34629)	34661	
Lumber, molded or beaded; novelty siding	34958	
M.		
Mackerel:		
Herrings (Abstract 36210)	34677	
Tunny fish. (*See* Tunny fish.)		
Machine, embroidery (Abstract 36272)	34704	
Machine parts; castings advanced (Abstract 36995)	34984	
Machine tools:		
Bottle-cap machines (Abstract 36695)	34824	
Hexagon turret lathes (Abstract 36708)	34845	
Jewelers' lathes (Abstracts 37042 and 37074)	35000	
Machine tools; chain-making machines:		
Abstract 36159	34668	
Abstracts 36918 and 36945	34933	
Maggi soup tablets; vegetables (Abstract 36950)	34933	
Magnetos, Hendricks Novelty Co., Indianapolis, Ind., drawback on	34721	
Mail entries; stamp tax; emergency revenue law	34948 35023	
Mail importations:		
Entry of	34739	
Method of rewrapping packages	34707	
Parcel-post convention with French Guiana	34825	
Reports to chief post-office inspector	34827	
Malines nets (Abstract 36334)	34742	
Manifest, card form of, for in-transit shipments	34853	
Manila hemp lace; packing charges (Abstract 36319)	34727	
Mantelpiece, antique oak (Abstract 36834)	34889	
Marble:		
Flooring, manufactures of marble (Abstract 36904)	34933	
Manufactures of (Abstract 36792)	34871	
Pedestals for statues; entireties (Abstract 37020)	34984	
Sculptures (Abstract 36249)	34698	
Market value, finding; reappraisement	34808	7604
Marking books; country of origin	34994	
Marking Japanese articles	34740	
Marmalade in jars (Abstract 36808)	34871	
Marrons, crude (Abstract 36988)	34969	
Masks, children's; surface-coated paper (Abstract 36128)	34652	
Matches:		
Abstract 36768	34871	
Fancy (Abstract 36724)	34865	
Mati leaves (Abstract 36476)	34763	
Matting rugs (Abstract 36182)	34668	
Mattings; shortage (Abstract 36260)	34698	
Measurement:		
Circular tiles (Abstract 36924)	34933	
Foreign vessels. (*See* Vessels.)		
Meat-inspection regulations	34848	
Medicinal and toilet preparations:		
McKesson & Robbins, New York, drawback on	34634	
Sanitol Chemical Laboratory Co., St. Louis, Mo., drawback on	34720	
Medicinal preparations:		
I. L. Lyons & Co. (Ltd.), New Orleans, La., drawback on	34692	
Powers-Weightman-Rosengarten Co., Philadelphia, Pa., drawback on	34781	

Subject.	Dept. No.	G. A. No.
Medicinal preparations and flavoring extracts, H. K. Mulford Co., Philadelphia, Pa., drawback on	34813	
Memorandum decisions, court of customs appeals; suits dismissed	35020	
Mercerized cotton cloth (Abstract 36831)	34889	
Merchandise:		
Entry of	34614	
Examination of, prior to entry	34744	
Mercurial preparations:		
Chas. Pfizer & Co., New York, drawback on	34679	
Corrosive sublimate (Abstract 36154)	34668	
Mallinckrodt Chemical Works, St. Louis, Mo., drawback on	34795	
Mesh bags (Abstract 36378)	34742	
Metal belts and ornaments (Abstract 36932)	34933	
Metal bottle caps, decorated	34844	7617
Metal buckles or slides (Abstract 36878)	34920	
Metal-coated paper initials (Abstract 37041)	35000	
Metal pencils, fancy	34870	7625
Metal perfume flasks (Abstract 36771)	34871	
Metal pots containing artificial flowers (Abstract 36527)	34774	
Metal screw covers for jars:		
Abstract 36113	34652	
Abstract 36698	34824	
Metal slides; jewelry (Abstract 36687)	34824	
Metal-thread embroidered scarfs (Abstract 36243)	34698	
Metal-thread goods (Abstract 36779)	34871	
Mexico, arms and munitions of war to	34758	
Mica:		
Abstract 36216	34677	
Washers for gramophones (Abstract 36977)	34969	
Milk chocolates, Lamont, Corliss & Co., New York, drawback on	34794	
Mill buttings:		
Abstract 36860	34908	
Abstract 37021	34984	
Millinery ornaments:		
Abstract 36149	34668	
Brass fasteners (Abstract 36263)	34704	
Cabochons (Abstract 36931)	34923	
Hatpins (Abstract 37085)	35020	
Mineral water, salt brine (Abstract 36365)	34742	
Mineral wax; chemical compound:		
Abstract 36208	34677	
Abstract 36773	34871	
Minnesota, Dakota & Western Railway Co., bond of, as common carrier	34623	
Mirrors:		
Abstract 36941	34933	
Parabolic (Abstracts 37098 and 37139)	35027	
Pyroxylin articles	34919	7638
Shell boxes (Abstract 36262)	34704	
Toys (Abstract 36974)	34969	
Triplicate (Abstracts 36892 and 36893)	34920	
Mixture of goods; separation	34843	7616
Moccasins, leather (Abstract 37028)	34984	
Model (Abstract 36296)	34704	
Modeling clay:		
Abstract 36458	34763	
Appeal from Abstract 36458 (T. D. 34763)	34849	
Models:		
Wearing apparel	34898	
Plaster of Paris casts of sculpture	34905	7632
Mohair waste ejusdem generis with wool waste	34997	7649

Subject.	Dept. No.	G. A. No.
Molded or beaded lumber; novelty siding	34958	
Montan wax (Abstract 36460)	34763	
Moose heads (Abstract 36102)	34629	
Mosaic cubes:		
Colored glass cubes; appeal from Abstract 36586 (T. D. 34789)	34909	
Manufactures of glass (Abstract 36586)	34789	
Mother-of-pearl:		
Cabochons (Abstract 36931)	34933	
Shoe buttons	34784	7598
Motion-picture film; personal effects	34931	7645
Motor trucks and parts of, Standard Motor Truck Co., Detroit, Mich., drawback on	34988	
Mousseline bands, appliquéd (Abstract 36887)	34920	
Moving-picture films	34892	
Personal effects	34931	7645
Mufflers, knitted silk:		
Appeal from Abstract 36162 (T. D. 34668)	34762	
Fringed (Abstract 36162)	34668	
Mufflers, woven silk, fringed (Abstract 36919)	34933	
Munitions of war; Mexico	34758	
Mushrooms in tins (Abstracts 36620 and 36648)	34810	
Mushrooms; refund on goods reshipped by mistake (Abstract 36290)	34704	
Mushrooms, weight of:		
Abstract 36507	34774	
Abstract 37114	35027	
Mushrooms, weight of coverings of; immediate coverings (Abstract 37133)	35027	
Musical instruments:		
Abstracts 36934–36936	34933	
Accordions; toys (Abstract 36824)	34889	
Castanets (Abstract 36432)	34756	
Earthenware steins (Abstract 36100)	34629	
Scientific apparatus (Abstract 36478)	34763	
Music-box disks; toys (Abstract 36976)	34969	
Muskrat skins and plates, C. & E. Chapal Frères & Cie., Brooklyn, N. Y., drawback on	34884	
Mustard, weight of (Abstract 36647)	34810	
N.		
Nail polishers; pyroxylin articles (Abstract 36587)	34789	
Nail powder; toilet preparation (Abstract 37060)	35000	
Naphthalin; tare; wool (Abstract 36575)	34789	
Neat cattle from New Zealand	34765	
Necklace clasps (Abstract 36105)	34652	
Needlecases (Abstract 36131)	34652	
Needle-threading machines, cushions for (Abstract 36668)	34824	
Netherlands, sugar produced in the	34678	
Nets:		
Malines (Abstract 36334)	34742	
Silk hair (Abstract 36416)	34756	
Neutrality	34899	
Clearance of vessels	34693 34811	
Enforcement of laws	34695	
Proclamation by President	34674	
Radio communication	34777	
Supplementing T. D. 34693	34718	
New trials in reappraisement cases before a single general appraiser	34785	7599
New Zealand, neat cattle from	34765	
Nickel sulphate; chemical compound (Abstract 36829)	34889	

Subject.	Dept. No.	G. A. No.
Night lights:		
Abstract 36126	34652	
Paraffin chief value (Abstract 36996)	34984	
Nippers and pliers; forceps, etc	35018	7655
Nonenumerated articles; fern balls (Abstract 36288)	34704	
Nonimportation:		
Damaged beans (Abstract 36289)	34704	
Shortage (Abstract 36812)	34871	
Nori in sheets, dried; prepared vegetables (Abstract 36790)	34871	
Northern Central Railway Co., bond of, as common carrier	34766	
Notice of—		
Advance; reappraisement	34842	7615
Appeal to be forwarded by collector	34859	7619
Refund; customs blanks	34914	
Novelty mirrors, Parisian Novelty Co., Chicago, Ill., drawback on	34850	
Novelty siding:		
Abstract 37057	35000	
Abstract 37118	35027	
Molded or beaded lumber	34958	
Novelty siding; beaded lumber:		
Abstract 36765	34871	
Abstract 36067	34629	
Appeal from Abstract 36067 (T. D. 34629)	34661	
Nursery stock:		
Plant quarantine act	34993	
Spiræa (Abstract 37132)	35027	
Nut oil (Abstract 37083)	35020	
Nuts:		
Abstracts 36710 and 36711	34845	
Habicht, Braun & Co., New York, drawback on	34620	
O.		
Oil cake (Abstract 37046)	35000	
Oil painting on cotton cloth, lithographic print of, not a work of art	34929	7643
Oils:		
Craycroft Oil Co., New York, drawback on	34877	
Petitgrain, sweet almonds, and peach kernels (Abstract 37052)	35000	
Old burlaps; paper stock (Abstract 36578)	34789	
Old cotton tie buckles (Abstract 36537)	34774	
Old gunny bagging (Abstracts 36519 and 36520)	34774	
Old gunny bagging; rags:		
Abstract 36579	34789	
Abstract 36759	34865	
Olive oil, bottles containing (Abstract 37138)	35027	
Olive oil in tins:		
Abstract 36684	34824	
Abstract 36840	34908	
Abstracts 36909 and 36910	34933	
United States *v.* Younglove Grocery Co	34873	
Olives:		
Austin, Nichols & Co., New York, drawback on	34622	
Falcon Packing Co., New York, drawback on	34735	
Olives in olive oil (Abstract 36189)	34668	
Opals, imitation, on wire (Abstract 37100)	35027	
Opera glasses; toys (Abstract 36978)	34969	
Opium:		
Abstract 36881	34920	
Crude (Abstract 36639)	34810	
Optical glass; colored glass (Abstract 36798)	34871	
Optical lenses for bicycle lamps (Abstract 36425)	34756	
Orange oil (Abstract 36766)	34871	

Subject.	Dept. No.	G. A. No.
Orchil:		
Abstract 36877	34920	
Classification of, under act of 1909	34817	7607
Original paintings in oil; sufficiency of protest (Abstract 36833)	34889	
Ornamental grasses (Abstract 36585)	34789	
Ornaments and trimmings, raffia (Abstract 36165)	34668	
Ornaments, millinery. (*See* Millinery ornaments.)		
Outward cargoes, giving out information concerning	34868	
Oxide of—		
Chromium; colors (Abstract 37081)	35020	
Iron (Abstract 36549)	34789	
Manganese; Braunstein grob (Abstract 36912)	34933	
P.		
Packing charges; manila hemp lace (Abstract 36319)	34727	
Paintings in oil, original; sufficiency of protest (Abstract 36833)	34889	
Paints; artists' colors (Abstract 37080)	35020	
Palm leaf:		
Manufactures of (Abstract 36726)	34865	
Split (Abstract 37055)	35000	
Panama Canal act; outfit and equipment for vessels (Abstract 37076)	35000	
Panels, tile (Abstracts 36908 and 36925)	34933	
Paper:		
Canadian reciprocity (Abstracts 36577 and 36606)	34789	
Machine-made (Abstract 36739)	34865	
Paper not specially provided for (Abstract 36112)	34652	
Paper stock:		
Abstracts 36654 and 36673	34824	
Old burlaps (Abstract 36578)	34789	
Paper:		
Printing (Abstract 36217)	34677	
Weight of (Abstract 36307)	34727	
Wood pulp; Canadian reciprocity (Abstract 36299)	34704	
Parabolic mirrors (Abstracts 37098 and 37139)	35027	
Parcel post:		
Convention with French Guiana	34825	
Samples of food and drug products	34745	
Withdrawals from warehouse	34703	
Parsley seed; crude drugs (Abstract 36223)	34677	
Parts of musical instruments (Abstract 36936)	34933	
Passengers' baggage; breaking locks on trunks	34804	
Paste and metal; jewelry (Abstract 36589)	34789	
Paste articles; jet combs (Abstract 36686)	34824	
Paste, manufactures of (Abstract 36981)	34969	
Payment of salaries and compensation	34705	
Peach kernels; oils:		
Abstract 37052	35000	
Abstract 37082	35020	
Peanut oil (Abstract 36962	34969	
Pearl bead necklaces, imitation (Abstract 36489)	34774	
Pearl beads, imitation. (*See* Imitation pearl beads.)		
Pearls, imitation:		
Abstract 36490	34774	
Abstract 36940	34933	
Pearls; precious stones (Abstract 36421)	34756	
Pease; dried:		
Lentils. (*See* Lentils.)		
Seed pease (Abstract 36989)	34969	
Pease in tins damaged by sea water; nonimportation (Abstract 36953)	34933	

Subject.	Dept. No.	G. A. No.
Pencils:		
Advertising (Abstract 36564)	34789	
Fancy metal	34870	7625
Pepper, ground red (Abstract 37135)	35027	
Peppers:		
Canned (Abstract 36297)	34704	
Spanish red, or pimentos	34667	7590
Perfume flasks, metal (Abstract 36771)	34871	
Perfumery boxes; unusual coverings (Abstract 36369)	34742	
Personal adornment, articles of (Abstract 36422)	34756	
Personal effects; motion-picture films; act of 1913	34931	7645
Petitgrain; oils (Abstract 37052)	35000	
Philippines:		
Certificates of origin	34749	
Cigars, cheroots, and cigarettes	34630	
Phonograph disks; American goods returned (Abstract 36729)	34865	
Phosphor bronze bristles, brush with (Abstract 37023)	34984	
Photographic paper, Rochester Photo Works (Inc)., Rochester, N. Y., drawback on	34790	
Pianos and player pianos, Aeolian Co., New York, drawback on	35011	
Pianos, French & Sons Co., Newcastle, Ind., drawback on	34800	
Pickled herrings (Abstract 36268)	34704	
Picot edge ribbon (Abstract 36090)	34629	
Picot or loop thread cotton braid (Abstract 36746)	34865	
Picture frames, pyroxylin (Abstract 36591)	34789	
Pigment containing zinc (Abstract 36769)	34871	
Pilchards; herrings (Abstract 36774)	34871	
Pile fabrics (Abstracts 36495 and 36496)	34774	
Pile protectors, iron (United States *v.* American Railroad Co. of Porto Rico)	35005	
Pimentos or Spanish red peppers	34667	7590
Pinafores, children's, printed cloth for	34670	
Pincushions, cotton chief value (Abstract 36891)	34920	
Pine-cone nuts:		
Appeal from Abstract 36255 (T. D. 34698)	34793	
Weight of (Abstract 36255)	34698	
Placards, show cards, or advertising signs	34860	7620
Plain woven fabrics; crash or toweling	34818	7608
Plant quarantine act:		
Collectors' instructions	34625	
Nursery stock	34993	
Plaster of Paris:		
Casts of sculpture; models	34905	7632
Statuettes (Abstract 36863)	34908	
Plate powder (Abstract 36099)	34629	
Plated antimony ware	34651	7587
Plates, semicircular, for making iron piles	34706	
Platinum, scrap (Abstract 36738)	34865	
Platinum wire; chain links (Abstract 36375)	34742	
Plumage:		
Rhea	34886 34913	
Noncontiguous territory	34748	
Polished plate glass; glass towel bars (Abstract 37127)	35027	
Polished steel; steel strips (Abstract 36533)	34774	
Porto Rico coffee	34672	
Ports: Providence, R. I., immediate-transportation port	34631	
Post cards:		
Abstract 36114	34652	
Embossed (Abstract 37105)	35027	
Lithographic (Abstract 36997)	34984	

Subject.	Dept. No.	G. A. No.
Post-office inspector, reports to chief; mail importations	34827	
Potato starch (Abstract 37113)	35027	
Potatoes, ground desiccated (Abstract 37090)	35020	
Powdered glass; abrasives; waste	34628	7585
Power of collector; reliquidation	34917	7636
Precious stones, imitation. (*See* Imitation precious stones.)		
Precious stones; pearls (Abstract 36421)	34756	
Prepared vegetables and tunny fish in tins (Abstract 36276)	34704	
Preserved and canned pears, Curtice Bros. Co., Rochester, N. Y., drawback on	34839	
President, proclamation by; neutrality	34674	
Printing machines; printing presses	34841	7614
Printing paper:		
Abstract 36217	34677	
Abstract 36596	34789	
Abstract 36720	34865	
Procedure and practice, rules of, before Board of General Appraisers	34683	
Proclamation by the President; neutrality	34674	
Pro forma invoice:		
Abstract 36484	34763	
Entry by	34999	7651
Value (Abstract 36229)	34677	
Protest by wrong party (Abstract 36309)	34727	
Protest fee	34926 34927	7640 7641
Abstract 36315	34727	
Abstract 36331	34742	
Abstract 36473	34763	
Abstract 37104	35027	
Protest filed too late:		
Abstract 36104	34629	
Abstract 36197	34668	
Abstract 36310	34727	
Abstract 36311	34727	
Abstract 36643	34810	
Protest:		
Sufficiency of; commissions; duress (Abstract 36292)	34704	
Timeliness of; customs regulations (Abstract 36235)	34677	
Protests abandoned: 34652, 34668, 34677, 34742, 34756, 34763, 34774, 34789, 34810, 34824, 34845, 34871.		
Protests dismissed: 34668, 34677, 34698, 34742, 34774, 34810, 34865, 34871.		
Protests overruled: 34629, 34652, 34668, 34677, 34698, 34704, 34727, 34742, 34756, 34763, 34774, 34789, 34810, 34824, 34845, 34865, 34871.		
Providence, R. I., immediate-transportation port	34631	
Publications for gratuitous private circulation (Abstracts 36218 and 36219)	34677	
Publications free of duty, under act of 1913	34725	
Pull cards, lithographic (Abstract 36271)	34704	
Pumice stone (Abstract 36122)	34652	
Pyrometer tubes:		
Abstract 36991	34969	
Stegemann, jr., *v.* United States	34935	
Pyroxylin articles:		
Abstract 36407	34756	
Abstract 36801	34871	
Abstracts 36565, 36587, 36588, 36591, and 36592	34789	
Mirrors	34919	7638
Proxylin, weight of (Abstract 36170)	34668	

Subject.	Dept. No.	G. A. No.
Q.		
Quantity of goods (Abstract 37045)	35000	
Quilts woven on Jacquard looms (Abstract 36788)	34871	
R.		
Radioactive medicine (Abstract 36073)	34629	
Radio communication:		
Executive order regarding	34712	
Neutrality	34777	
Radiogen-Trinkwasser:		
Capsules and ampoules (Abstract 36915)	34933	
Radium bromide in water	34863	7623
Radium and containers (Abstract 37051)	35000	
Radium bromide in water; Radiogen-Trinkwasser	34863	7623
Radium residuum; fertilizer (Abstract 37079)	35020	
Raffia ornaments and trimmings (Abstract 36165)	34668	
Rags. (*See* Old gunny bagging.)		
Railway passenger coaches, Osgood Bradley Car Co., Worcester, Mass., drawback on	34656	
Raincoats, cotton chief value (Abstract 36783)	34871	
Rattan, split; act of 1913	34932	7646
Raw fur skins (Abstract 36084)	34629	
Read test sustained; tea (Macy *v.* Browne)	34653	
Reappraisement	34842 34859 34902	7615 7619 7629
Appeals; act of 1913	34996	7648
Finding market value	34808	7604
Legality of. (*See* Legality of reappraisement.)		
New trials in reappraisement cases before a single general appraiser	34785	7599
Validity of (Abstract 36098)	34629	
Validity of appeal to	34809	7605
Red chalk (Abstract 36905)	34933	
Red peppers, dried (Abstract 36836)	34889	
Reduction of entered value	34806	
Refined camphor in tablets	34612	
Refined glycerin, drawback on	34717	
Refund on goods reshipped by mistake (Abstract 36290)	34704	
Regalia:		
Abstract 36103	34629	
Abstract 36303	34727	
Regulations; additional duty (Abstract 36274)	34704	
Rehearing denied:		
American Bead Co., 360075 (Abstract 36402)	34742	
American Bead Co., 657640, etc. (Abstract 36199)	34668	
American Bead Co., 551219, etc. (Abstract 36203)	34668	
Brown & Roese, 696758 (Abstract 36205)	34668	
Continental Commission Co., 725385–4538 (Abstract 36401)	34742	
Cunard Steamship Co., 732326 (Abstract 36614)	34789	
Eimer & Amend, 684472, etc. (Abstract 36615)	34789	
Furuya Co. et al., 695316, etc. (Abstract 36616)	34789	
International Forwarding Co., 693581–44322 (Abstract 36200)	34668	
Joel-Baily-Davis Co., 726263, etc. (Abstract 36397)	34742	
Lewis & Conger, 703289 (Abstract 36145)	34652	
McGettrick et al., 714276, etc. (Abstract 36142)	34652	
Mishel & Co., 722901, etc. (Abstract 36398)	34742	
Produce Distributors Co., 723584 (Abstract 36613)	34789	
Quong Lee & Co. et al., 676976, etc. (Abstract 36814)	34871	

Subject.	Dept. No.	G. A. No.
Rehearing denied—Continued.		
Rattan & Cane Co., 690388, etc. (Abstract 36202)	34668	
Rosenthal & Grotta, 726585 (Abstract 36204)	34668	
Rothschild & Co., 497613 (Abstract 36143)	34652	
Sears, Roebuck & Co., 670590–43166, etc. (Abstract 36396)	34742	
Strawbridge & Clothier, 632763, etc. (Abstract 36198)	34668	
Strawbridge & Clothier, 486660, etc. (Abstract 36201)	34668	
Wanamaker, J., 706314 (Abstract 36144)	34652	
Rehearing granted:		
Aluminum; Guiterman, Rosenfeld & Co., 740023 (Abstract 37149)	35027	
American goods returned; iron drums; Strong & Trowbridge Co., 729192 (Abstract 36819)	34871	
Articles of personal adornment; Cohn & Rosenberger, 518184, etc. (Abstract 37148)	35027	
Articles of personal adornment; International Forwarding Co., 741720 (Abstract 36818)	34871	
Beaded trimmings; Loewenthal & Co., 737479 (Abstract 37033)	34984	
Beads; Lebolt & Co., 545317–38313 (Abstract 36206)	34668	
Bean cake; Okada & Ichida Co., 698407 (Abstract 36617)	34789	
Bicycle handle grips; Mead Cycle Co., 692734, etc. (Abstract 36868)	34908	
Clerical error; Hawley & Letzerich, 710789, etc. (Abstract 36619)	34789	
Cotton cloth; Sachs & Co., 706673, etc. (Abstract 36400)	34742	
Drawnwork handkerchiefs; Jabara & Bro., 500446 (Abstract 36399)	34742	
Fish in tins; Benson et al., 520767–38628, etc. (Abstract 36609)	34789	
Fishing tackle; Dame, Stoddard Co., 757197 (Abstract 37150)	35027	
Fitted leather cases; Mark Cross Co., 683614 (Abstract 36865)	34908	
Hatpin tops; Samstag & Hilder Bros., 579768 (Abstract 36618)	34789	
Imitation-horsehair hats, etc.; J. & H. Rosenberg et al., 290373, etc. (Abstract 36817)	34871	
Imitation precious stones; American Bead Co., 630384 (Abstract 36140)	34652	
Jacquard figured goods; Richard & Co., 740045, etc. (Abstract 37152)	35027	
Jacquards, figured; Hanks & Montgomery, 754432 (Abstract 37034)	34984	
Jewelry; Kraemer & Co., 711746 (Abstract 36869)	34908	
Joss sticks; Brown & Co., 721707 (Abstract 37036)	34984	
Lava stone; Downing & Co., 695748 (Abstract 36821)	34871	
Legality of reappraisement; F. G. Favaloro, 722539, etc. (Abstract 37037)	34984	
Lithographic prints; seals; Birn Bros., 714367, etc. (Abstract 37032)	34984	
Miners' safety apparatus; S. I. Oettinger, 720512 (Abstract 36141)	34652	
Novelty siding; beaded lumber; Myers & Co. et al., 732915, etc. (Abstract 36612)	34789	
Pyroxylin articles; A. Strauss & Co., 668040 (Abstract 36867)	34908	
Reliquidation; Zucca & Co., 610720 (Abstract 36820)	34871	
Spangles; Gage Bros. & Co., 752411 (Abstract 37147)	35027	
Tennis nets; Wright & Ditson, 730564 (Abstract 37151)	35027	
Wearing apparel; J. L. Vandiver, 715163 (Abstract 36816)	34871	
Wire staples; B. F. Goodrich Co., 731339, etc. (Abstract 36611)	34789	
Wood pulp and paper; M. B. Carlin, 648990, etc. (Abstract 36815)	34871	
Wood pulp and paper; Salomon & Co. et al., 615069, etc. (Abstract 36866)	34908	
Wood pulp; Bertuch & Co. et al., 615041, etc. (Abstract 37031)	34984	
Wood pulp; Gottesman & Son et al., 615838, etc. (Abstract 37035)	34984	
Wool articles imported between October 3, 1913, and January 1, 1914; McCutcheon & Co., 740167 (Abstract 36610)	34789	
Reliquidation:		
Abstract 36261	34698	
Increased valuation	34917	7636

Subject.	Dept. No.	G. A. No.
Reliquidation—Continued.		
Carmelite ware (Abstract 36373)	34742	
Flax pillow tubing (Abstract 37111)	35027	
Reliquidation; fraud:		
Abstract 36340	34742	
Abstract 36544	34774	
Removals in classified service, civil-service rules regarding	34728	
Residue from distillation (Abstract 36239)	34677	
Resin (Abstract 36880)	34920	
Returns, appraisers'	34992	
Rhea, plumage of	34886 34913	
Rhododendrons; evergreen seedlings; mixture of goods (Abstract 36849)	34908	
Ribbons, Picot edge (Abstract 36090)	34629	
Rockingham ware; stipulation (Abstract 36542)	34774	
Roofing felt (Abstract 36127)	34652	
Rosaries:		
Abstract 36265	34704	
Abstract 36423	34756	
Abstract 36449	34763	
Abstract 36568	34789	
Abstract 36633	34810	
Abstract 36662	34824	
Abstract 37009	34984	
Abstracts 36731 and 36732	34865	
Rotten fruit:		
Abstract 36581	34789	
Act of 1909	34822	7612
Regulations (Abstract 36714)	34845	
Rotten onions; compliance with regulations; notice (Abstract 36251)	34698	
Rubber jewelry:		
Abstract 36426	34756	
Abstract 36557	34789	
Abstract 36826	34889	
Rubber, waste; india rubber, crude (Abstract 36169)	34668	
Rugs:		
Abstract 36754	34865	
Classification of, under act of 1909	34816	7606
Straw, classification of, under act of 1913	34820	7610
Rules of procedure and practice before Board of General Appraisers	34649 34683	
Rum from Great Britain; countervailing duty	34982	
Ruscus leaves:		
Abstract 36628	34810	
Abstract 36839	34908	
Ryan Elevator & Forwarding Co., bond of, as common carrier	34709	
S.		
Sake; leakage:		
Abstract 37137	35027	
S. Ban Co. et al. *v.* United States	34874	
Salaries and compensation, payment of	34705	
Salmon; fish in tins (Abstract 36994)	34984	
Salt brine; mineral water (Abstract 36365)	34742	
Salvation Army badges (Abstract 36802)	34871	
Salved cargo; customs duties; priority (Albury et al. *v.* Cargo of the *Lugano*)	34866	
Samples:		
Abstract 37091	35020	
Food and drug products; parcel post	34745	
Seeds for Department of Agriculture	34646	
Submission on; fruits in own juices (Abstract 36279)	34704	
Upholstery (Abstract 36248)	34698	

Subject.	Dept. No.	G. A. No.
Sampling; damaged sugar (Abstract 36512)	34774	
San Diego & Arizona Railway Co., bond of, as common carrier	34771	
Sand glasses; entireties; dutiable value (Abstract 36232)	34677	
Sand; ground geyserite (Abstract 36371)	34742	
Sandstone; building stone (Abstract 36069)	34629	
Sapphire blanks:		
Abstract 36350	34742	
Abstract 36635	34810	
Abstract 36661	34824	
Sardine tins, capacity of (Abstract 36079)	34629	
Sardines; fish in tins (Abstract 36846)	34908	
Satsuma ware; enameled earthenware (Abstract 36240)	34677	
Sauce; shoyu (Abstract 36224)	34677	
Sausage; rolled ham (Abstract 36277)	34704	
Sawed talc (Abstract 36339)	34742	
Saws, E. C. Atkins & Co., Indianapolis, Ind., drawback on	34644	
Schmaschen gloves (Abstract 36624)	34810	
Scientific apparatus:		
Abstract 37048	35000	
Abstracts 36477 and 36478	34763	
Scissors, unfinished (Abstract 36538)	34774	
Scrap leather; leather dust; fertilizer (Abstract 36605)	34789	
Scrap platinum (Abstract 36738)	34865	
Scrap tin; American goods returned:		
Abstract 36196	34668	
Abstract 37030	34984	
Scrap tin waste (Abstract 36515)	34774	
Screens (Abstracts 37053 and 37054)	35000	
Screens, wood:		
Abstract 36968	34969	
Abstract 37119	35027	
Screenings, barley (Abstract 36236)	34677	
Sculptures:		
Abstract 36510	34774	
Bronze and ivory statue (Abstract 36225)	34677	
Fountain of marble and metal (Abstract 36095)	34629	
Marble (Abstract 36249)	34698	
Plaster of Paris casts of; models	34905	7632
Seals; lithographic prints:		
Abstract 36539	34774	
Abstract 36777	34871	
Sealskins; Japanese cowhides (Abstract 36679)	34824	
Sea stores defined; ship's equipment	34925	7639
Seattle & International Railway Co., bond of, as common carrier	34977	
Seed importation act of August 24, 1912	35024	
Seeds, samples of, for Department of Agriculture	34646	
Seidels, glass (Abstract 37126)	35027	
Self-starting devices for automobiles, Gray & Davis (Inc.), Boston, Mass., drawback on	34687	
Semicircular plates for making iron piles; appeal from Absrtact 35945 (T. D. 34571)	34706	
Separation; mixture of goods	34843	7616
Serums, viruses, etc., importation of; list of manufacturers	34642	
Sewing baskets; sufficiency of protest (Abstract 36481)	34763	
Sewing machine parts (United States *v.* Durbrow & Hearne Manufacturing Co.)	34940	
Shaving and toilet soap (Abstract 36767)	34871	
Shears, hedge	34665	7588
Sheep dip; creolin-Pearson (Abstract 36180)	34668	
Sheepskins:		
Skivers (Abstract 36676)	34824	
Tanned (Abstract 36657)	34824	

Subject.	Dept. No.	G. A. No.
Sheet music (Abstract 36129)	34652	
Shell boxes; mirrors (Abstract 36262)	34704	
Shell cameos (Abstract 36689)	34824	
Ship's equipment	34925	7639
Appeal from G. A. 7639	35022	
Ship timber; spotted gum (Abstract 37059)	35000	
Shirt bosoms; tucked wearing apparel	34823	7613
Shoe buckles; jewelry (Abstract 36403)	34756	
Shoe buttons, mother-of-pearl	34784	7598
Shoe cloth, Windram Manufacturing Co., Boston, Mass., drawback on	34633	
Shooks; American goods returned (Abstract 36795)	34871	
Shortage:		
Abstract 36172	34668	
Abstract 36231	34677	
Abstract 36395	34742	
Abstract 36470	34763	
Abstract 36574	34789	
Abstract 37075	35000	
Abstracts 37116 and 37117	35027	
Bottles of whisky (Abstract 36517)	34774	
Lace (Abstract 36370)	34742	
Mattings (Abstract 36260))	34698	
Nonimportation (Abstract 36812)	34871	
Shortbread, Waverly; similitude	35017	7654
Show cards:		
Abstract 36354	34742	
Appeal from G. A. 7620	34896	
Cardboard chief value	34860	7620
Surface-coated paper (Abstract 37087)	35020	
Shoyu; sauce:		
Abstract 36224	34677	
Abstract 36293	34704	
Shrinkage (United States *v.* Van Ingen & Co. et al.)	34970	
Shutters; blinds of wood (Abstract 37053)	35000	
Silk and wool hats (Abstract 36897)	34920	
Silk, appliquéd (Abstract 36864)	34908	
Silk belting; 5 per cent discount (Abstract 36137)	34652	
Silk braids; silk ribbons (Abstract 36948)	34933	
Silk comfortable, appliquéd (Abstract 36744)	34865	
Silk cords (Abstract 36091)	34629	
Silk hair nets:		
Abstract 36136	34652	
Abstract 36416	34756	
Appeal from Abstract 36066 (T. D. 34629)	34743	
Lever or Gothrough machines (Abstract 36066)	34629	
Silk plush; hatters' plush (Abstract 36920)	34933	
Silk ribbons:		
Artificial (Abstract 36317)	34727	
Silk braids (Abstract 36948)	34933	
Silk scarfs; wearing apparel (Abstract 36116)	34652	
Silk trimmings:		
Abstract 36135	34652	
Crape (Abstract 36358)	34742	
Silk ribbons (Abstract 36384)	34742	
Silk veilings (Abstract 36094)	34629	
Silk velvet:		
(Abstract 36389)	34742	
Hatters' plush (Abstract 36885)	34920	
Silk velvet and wood jewelry boxes (Abstract 36884)	34920	
Silk yarn, spools containing (Abstract 36341)	34742	
Silver mesh (Abstract 36349)	34742	

Subject.	Dept. No.	G. A. No.
Single general appraiser, new trials in reappraisement cases before	34785	7599
Siphon bottles and parts, Koscherak Siphon Bottle Works, Hoboken, N. J., drawback on	34643	
Size of yarn; cotton cloth (Abstract 36787)	34871	
Skivers; sheepskins (Abstract 36676)	34824	
Skiving knives, metal (Abstract 36697)	34824	
Slippers, straw. (*See* Straw slippers.)		
Small compasses (Sussfeld, Lorsch & Co. *v.* United States)	34875	
Smokers' articles:		
Abstract 36337	34742	
Abstract 36426	34756	
Abstract 36557	34789	
Smoking tobacco, J. S. Maloof & Co., New York, drawback on	34641	
Snails, live (Abstract 36253)	34698	
Snap fasteners on tape (Abstract 36755)	34865	
Soap:		
Shaving and toilet (Abstract 36767)	34871	
Toilet; medicated soap (Abstract 36658)	34824	
Soap powder; chemical compound (Abstract 36683)	34824	
Solidonia fiber, duty on, under act of 1913	34761	
Soluble or chemically treated starch	34906	7633
Soup tablets, Maggi; vegetables (Abstract 36950)	34933	
Sour cherries, Dalmatian (Abstract 36246)	34698	
Soy sauce; shoyu (Abstract 36293)	34704	
Spanish cedar; cabinet wood (Abstract 37058)	35000	
Spanish red peppers or pimentos	34667	7590
Spark plugs (Abstract 36469)	34763	
Spar prisms (United States *v.* Bausch & Lomb Optical Co.)	34942	
Spear-back gloves (Abstract 36625)	34810	
Spearmint lozenges; confectionery (Abstract 36278)	34704	
Special-deposit account; income tax; moneys withheld at source by disbursing officers	34699	
Special-tax liability; customhouse brokers	34962	
Spindle banding (Abstract 36669)	34824	
Spiræa; nursery stock (Abstract 37132)	35027	
Split bamboo:		
Abstracts 37055 and 37056	35000	
Duty on, under act of 1913	34751	
Split leather:		
Abstract 36552	34789	
Abstract 36964	34969	
Act of 1913	34932	7646
Sponges:		
Abstract 36068	34629	
Abstract 36583	34789	
Abstract 36626	34810	
Spools containing silk yarn:		
Abstract 36341	34742	
Abstract 36475	34763	
Spotted gum; ship timber (Abstract 37059)	35000	
Sprats and anchovies in half barrels (Abstract 36109)	34652	
Sprinkler tops, decorated; trade-marks	34888	7627
Sprocket chains:		
Abstract 36332	34742	
Abstract 36781	34871	
Spun silk yarn (Abstract 36318)	34727	
Stained or painted glass windows for house of worship	34928	7642
Stamp tax:		
Bonds, etc., act of Oct. 22, 1914	34979	
Consolidated entry	34978	
Mail entries; emergency revenue law	34948	
Parcel-post packages	34983	

Subject.	Dept. No.	G. A. No.
Stampings, steel (Abstract 36778)	34871	
Stamps, customs, for cigars made in bonded manufacturing warehouse	34659	
Stamps for entries, bonds, etc	34910	
Staples, wire, classification of, under act of 1913	35025	7657
Starch, soluble or chemically treated	34906	7633
Statue, broken; abandonment; nonimportation (Abstract 36580)	34789	
Statuettes, plaster of Paris (Abstract 36863)	34908	
Statutory provisions, scope of; wrought earth	34697	7594
Steel bars, bands or strips, and plates of	34694	
Steel stampings (Abstract 36778)	34871	
Steel strips; polished steel (Abstract 36533)	34774	
Steel window sashes and frames	34675	7591
Abstract 36847	34908	
Stem glassware (United States *v.* Burley & Tyrrell Co.)	34938	
Stipulation to dismiss (Abstract 36900)	34920	
Stone, crushed. (*See* Crushed stone.)		
Storage charges (Abstract 36465)	34763	
Stout:		
Capacity of barrels of (Abstract 36514)	34774	
Gauge of (Abstract 36516)	34774	
Strawberry pulp (Abstract 36955)	34933	
Straw braids (Abstract 37005)	34984	
Straw hats, trimmed. (*See* Trimmed straw hats.)		
Straw rugs, classification of, under act of 1913	34820	7610
Straw slippers:		
Abstract 36501	34774	
Abstract 36700	34824	
Abstract 37043	35000	
Abstract 37144	35027	
Brown & Co. *v.* United States	34936	
String beans in brine:		
Appeal from Abstract 36166 (T. D. 34668)	34732	
Vegetables (Abstract 36166)	34668	
Strings for musical instruments:		
Abstract 36855	34908	
Abstract 36934	34933	
Strung beads:		
Abstract 36347	34742	
Abstract 36437	34756	
Stuffed chicks and ducklings	35016	7653
Sufficiency of protest:		
Abstract 36146	34668	
Belting leather	34807	7603
Fish in tins (Abstract 36856)	34908	
United States *v.* Sheldon & Co	34946	
United States *v.* Troy Laundry Machinery Co	34947	
Sugar bags, jute (Abstract 37088)	35020	
Sugar, damaged; sampling (Abstract 36512)	34774	
Sugar produced in the Netherlands	34678	
Sugar tare (Abstracts 36573 and 36603)	34789	
Sugar wafers (Abstract 37136)	35027	
Sugars and sirups, drawback on	34662 34663 34664	
Suits dismissed, etc.; memorandum decisions Court of Customs Appeals	35021	
Sulphide of antimony; chemical compound (Abstract 36075)	34629	
Supreme Court, appeals from Court of Customs Appeals to	34747	
Surety bonds, etc., stamp tax on, act of Oct. 22, 1914	34979	

Subject.	Dept. No.	G. A. No.
Surface-coated paper:		
Abstract 36130	34652	
Show cards (Abstract 37087)	35020	
Surface-coated paper masks, children's (Abstract 36128)	34652	
Surgical bandages (Abstract 37109)	35027	
Sweepings, gold and silver (Abstract 36518)	34774	
Sweetened biscuits:		
Abstract 36670	34824	
Abstract 37134	35027	
Swivels, chain (Abstract 36946)	34933	
T.		
Tagua nut slabs, duty on, under act of 1913	34862	7622
Talc, sawed (Abstract 36339)	34742	
Talking machines, Crescent Talking Machine Co., New York, drawback on	34618	
Tampa, Fla., headquarters port No. 18	34780	
Tanned sheepskins (Abstract 36657)	34824	
Tanning extract (Abstract 36957)	34969	
Tape, cotton (Abstract 37112)	35027	
Tare:		
Naphthalin; wool (Abstract 36575)	34789	
Sugar (Abstracts 36573 and 36603)	34789	
Weight of wool (Abstract 36363)	34742	
Tea; Read test sustained (Macy *v.* Browne)	34653	
Teapots, earthenware (Abstract 36368)	34742	
Tender of entry; delivery of manifest (Abstract 36899)	34920	
Tennis balls (Abstract 36107)	34652	
Tennis nets (Abstract 36875)	34920	
Terra-cotta figure for school (Abstract 36952)	34933	
Texas-Mexican Railway Co., bond of, as common carrier	34915	
Thermometers:		
Abstract 36566	34789	
Abstract 37004	34984	
Thermometers and boxes; entireties; dutiable value (Abstract 36232)	34677	
Thread waste, jute	35015	7652
Tidies and bureau scarfs; drawnwork	34918	7637
Tile panels (Abstracts 36908 and 36925)	34933	
Tiles (Abstracts 36911 and 36924)	34933	
Time of filing proof; limitations by statute	34822	7612
Time of filing protest	34696	7593
Timeliness of protest; notice of liquidation (Abstract 36235)	34677	
Tin cans, Standard Oil Co. of New Jersey, drawback on	34924	
Tin waste, scrap (Abstract 36515)	34774	
Tinsel trimmings; braids (Abstract 37106)	35027	
Tissue paper; wrapping paper	34904	7631
Tobacco:		
Invoiced as filler and found to be wrapper, forfeiture of (United States *v.* Five Bales of Tobacco)	34891	
Leaf (Abstract 36326)	34742	
Toilet articles; bath tablets (Abstract 36895)	34920	
Toilet preparations, Kolynos Co., New Haven, Conn., drawback on	34769	
Toilet soap; medicated soap (Abstract 36658)	34824	
Tonnage tax; foreign-built yacht (Abstract 36858)	34908	
Tools, Cleveland Pneumatic Tool Co., Cleveland, Ohio, drawback on	35008	
Tops, hatpin:		
Abstract 36558	34789	
Beads; imitation jet (Abstract 36933)	34933	
Touring automobiles; consular certificates	34757	
Towel bars, glass (Abstracts 37097 and 37127)	35027	
Toweling, huck (Abstract 37000)	34984	

Subject.	Dept. No.	G. A. No.
Towels:		
Cotton, woven on Jacquard looms	34819	7609
Flax (Abstract 36749)	34865	
Turkish	35019	7656
Towels and quilts; Jacquard figured goods (Abstract 37129)	35027	
Toys:		
Accordions (Abstract 36937)	34933	
Beaded articles (Abstract 36150)	34668	
Brooches and pendants (Abstract 36284)	34704	
Fancy figures; favors (Abstract 36163)	34668	
Mirrors (Abstract 36974)	34969	
Music-box disks (Abstract 36976)	34969	
Opera glasses (Abstract 36978)	34969	
Small clocks (Abstract 36567)	34789	
Triplicate mirrors (Abstract 36892)	34920	
Wool camel (Abstract 36772)	34871	
Toys, jewelry:		
Abstract 36405	34756	
Abstract 36590	34789	
Trade-marks; decorated sprinkler tops	34888	7627
Trays, basket (Abstract 36466)	34763	
Trimmed hats:		
Abstracts 36313 and 36314	34727	
Imitation horsehair hats (Abstract 36233)	34677	
Trimmed hats in part of Lever lace (Abstract 36922)	34933	
Trimmed straw hats:		
Abstract 36314	34727	
Abstract 36244	34698	
Trimmings:		
Abstract 36742	34865	
Artificial silk (Abstract 36949)	34933	
Beaded (Abstract 36651)	34824	
Trinitrotoluol, classification of, under act of 1909	34787	7601
Trinity & Brazos Valley Railway Co., bond of, as common carrier	34711	
Triplicate mirrors (Abstracts 36892 and 36893)	34920	
Tripods, camera	34998	7650
Tube welding machines (Abstract 36132)	34652	
Tucked shirt bosoms; appeal from G. A. 7613	34856	
Tucked wearing apparel, duty on, under act of 1913	34823	7613
Tunny fish and prepared vegetables in tins (Abstract 36276)	34704	
Tunny fish; mackerel	34916	7635
Turbine blowers, Terry Steam Turbine Co., Hartford, Conn., drawback on	34691	
Turkey red oil or sulphonated oil, National Red Oil & Soap Co., Harrison, N. J., drawback on	34965	
Turkish towels	35019	7656
Twine, grass; baling twine (Abstract 36906)	34933	
Twist drills (Abstract 36811)	34871	
U.		
Umbrella sticks:		
Abstract 36342	34742	
Abstract 36725	34865	
Appeal from Abstract 36342 (T. D. 34742)	34837	
Umeboshi; umezuke; fruit in brine (Abstract 37145)	35027	
Underwear:		
Lever lace trimmed, embroidered (Abstract 36359)	34742	
Union Mills (Inc.), Hudson, N. Y., drawback on	34710	
Unfinished scissors (Abstract 36538)	34774	
Union fabrics (Abstract 36748)	34865	
Union glass cloth (Abstract 36497)	34774	

Subject.	Dept. No.	G. A. No.
Untrimmed hats:		
Abstract 36356	34742	
Ladies' scarfs (Abstract 36245)	34698	
Unusual coverings; perfumery boxes (Abstract 36369)	34742	
Upholstery samples (Abstract 36248)	34698	
V.		
Vaccine virus (Abstract 36072)	34629	
Vacuum cleaners and electric sweepers, Duntley Products Co., Erie Pa., drawback on	34840	
Vacuum cleaners, Eureka Vacuum Cleaner Co., Detroit, Mich., drawback on	34959	
Valdity of—		
Appeal to reappraisement	34809	7605
Bond; certified invoice	34999	7651
Reappraisement (Abstract 36098)	34629	
Value:		
Abstract 36522	34774	
Abstract 36791	34871	
Appliquéd silk (Abstract 36134)	34652	
Currency; certificate of depreciation (Abstract 36888)	34920	
Horses (Abstract 36646)	34810	
Pro forma invoice (Abstract 36229)	34677	
Variance between invoice description and goods (Abstract 36275)	34704	
Foreign coins. (*See* Coins, foreign, value of.)		
Vanity cases (Abstract 36426)	34756	
Variance between invoice description and goods; value (Abstract 36275)	34704	
Vegetable albumen; wheat products; cereal meal (Abstract 36813)	34871	
Vegetable fiber:		
Abstract 36238	34677	
Bassine (Abstract 36986)	34969	
Crude (Abstract 36464)	34763	
Veilings, silk (Abstract 36094)	34629	
Veils, D. Strauss Co. (Inc.), New York, drawback on	34640	
Velvet:		
Antique (Abstract 36295)	34704	
Cotton (Abstract 36093)	34629	
Cotton chief value; cloth (Abstract 36784)	34871	
Silk (Abstract 36389)	34742	
Velvets and plushes, Salt's Textile Manufacturing Co., Bridgeport, Conn., drawback on	34814	
Vessels:		
Canal Zone; bills of health	34759	
Clearance of; neutrality	34693 34811	
Equipment; regulations (Abstract 36595)	34789	
Measurement of foreign	34741	
Vinegar, proof of (Abstract 36254)	34698	
Violin necks; musical instruments (Abstract 36935)	34933	
Viruses, serums, etc.; list of manufacturers	34642	
Viscose caps (Nevin *v.* United States)	34945	
W.		
Wafers; biscuits; confectionery	34627	7584
Appeal from G. A. 7584	34738	
Wafers, sugar (Abstract 37136)	35027	
Wall-paper printing machines; printing presses	34841	7614
Walnuts, Bennett, Day & Co., New York, drawback on	34730	
Waste, mohair, ejusdem generis with wool waste	34997	7649

Subject.	Dept. No.	G. A. No.
Waste rubber:		
Ground (Abstract 36602)	34789	
India rubber, crude (Abstract 36169)	34668	
Watchcase engraving machines (Abstract 36213)	34677	
Watch jewels (Abstract 37003)	34984	
Water sets; decorated glassware (Abstract 37141)	35027	
Waverly shortbread; similitude	35017	7654
Wax:		
Manufactures of; night lights (Abstract 36996)	34984	
Montan (Abstract 36460)	34763	
Wax for phonograph records (Abstract 36562)	34789	
Wax fruits:		
Abstract 36548	34789	
Abstract 36722	34865	
Wearing apparel:		
Abstracts 36415 and 36417	34756	
Abstracts 36998, 37007, and 37008	34984	
Appliquéd (Abstracts 36500 and 36540)	34774	
Embroidered (Abstracts 36360 and 36388)	34742	
Embroidered cotton, in part of Lever lace (Abstract 36999)	34984	
Models of	34898	
Silk scarfs (Abstract 36116)	34652	
Tucked, duty on, under act of 1913	34823	7613
Wearing apparel in part of Lever lace (Abstract 36886)	34920	
Weight of—		
Coverings of mushrooms; immediate coverings (Abstract 37133)	35027	
Currants (Abstract 36468)	34763	
Diamonds (Abstract 36561)	34789	
Flax fabrics (Abstract 36498)	34774	
Garlic (Abstract 36954)	34933	
Labels (Abstract 36785)	34871	
Mustard (Abstract 36647)	34810	
Paper (Abstract 36307)	34727	
Pine-cone nuts (Abstract 36255)	34698	
Pyroxylin (Abstract 36170)	34668	
Wool; tare (Abstract 36363)	34742	
Weight of cheese:		
Abstract 36191	34668	
Abstract 36336	34742	
Weight of mushrooms:		
Abstract 36507	34774	
Abstract 37114	35027	
Western Steam Navigation Co., bond of, as common carrier	34957	
Wheat:		
Frozen (Schade & Co. *v.* United States)	35002	
Heated (Atwood-Stone Co. *v.* United States)	35004	
Wheat products:		
Appeal from Abstract 36813 (T. D. 34871)	35013	
Vegetable albumen (Abstract 36813)	34871	
Whetstones:		
Abstract 36305	34727	
Abstract 36338	34742	
Whisky, gauge of (Abstract 36394)	34742	
Willow baskets (Abstract 36480)	34763	
Wind shields, Diamond Manufacturing Co., Detroit, Mich., drawback on	34617	
Window sashes and frames, steel	34675	7591
Abstract 36847	34908	
Windows, stained or painted glass, for house of worship	34928	7642
Wine in excess (Abstract 36366)	34742	
Wire articles (Abstract 36133)	34652	

Subject.	Dept. No.	G. A. No.
Wire cloth:		
Abstract 37027	34984	
Brass (Abstract 36214)	34677	
Wire gauge	34701	
Wire staples:		
Abstract 36124	34652	
Classification of, under act of 1913	35025	7657
Witch-hazel, Gould Witch-Hazel Co., Windham, N. H., drawback on	34724	
Withdrawals for transportation; emergency revenue law	35006 35007	
Withdrawals from warehouse; parcel post	34703	
Wood-oil nuts (Abstract 36711)	34845	
Wood pulp:		
Abstract 36715	34845	
Abstract 36923	34933	
Abstracts 36486 and 36487	34763	
Abstracts 36656 and 36672	34824	
Canadian. (*See* Canadian reciprocity.)		
Favored nations (Abstract 36393)	34742	
Wood pulp; paper:		
Abstract 36299	34704	
Abstract 36854	34908	
Abstracts 36577, 36601, and 36606	34789	
Wood screens (Abstract 36968)	34969	
Wooden figures not regalia (Abstract 36951)	34933	
Wooden stands:		
Abstract 36195	34668	
Abstract 37049	35000	
Wool:		
Angora goat hair (Abstract 36153)	34668	
Articles imported between Oct. 3, 1913, and Jan. 1, 1914, (Abstract 36070)	34629	
Blankets (Abstract 36913)	34933	
Caps, knitted, ornamented	34985	
China, sheep's; appeal from Abstract 35843 (T. D. 34548)	34645	
Dress goods (Abstract 36441)	34756	
Felt, so-called	34615	
Wool grease:		
Abstract 36665	34824	
Abstract 36914	34933	
Wool machine pads (Abstract 36691)	34824	
Wool rugs; blankets (Abstract 36896)	34920	
Wool and jute fabrics (Abstract 36734)	34865	
Wool, camel; toys (Abstract 36772)	34871	
Works of art, lithographic print of oil painting on cotton cloth, not	34929	7643
Woven figured cotton cloth	34858	7618
Woven silk fabrics; silk braids (Abstract 36745)	34865	
Woven silk mufflers, fringed (Abstract 36919)	34933	
Wrapping paper; tissue paper	34904	7631
Wrought earth, construction of statute	34697	7594
Y.		
Yacht, foreign-built; tonnage tax (Abstract 36858)	34908	
Yachts of foreign register (Abstract 36474)	34763	
Yarn:		
Colored cotton (Abstract 36456)	34763	
Spun silk (Abstract 36318)	34727	
Z.		
Zibeline or ripple cloth and cattle-hair cloth	34624	
Zinc yellow (Abstract 37062)	35000	

O & JR
2/9/15

ADDITIONAL COPIES

OF THIS PUBLICATION MAY BE PROCURED FROM
THE SUPERINTENDENT OF DOCUMENTS
GOVERNMENT PRINTING OFFICE
WASHINGTON, D. C.
AT

$1.50 PER COPY

▽